

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>JAMES CHELMOWSKI</b>	)	
<b>Complainant,</b>	)	
	)	<b>FILE NO: EB-14-MD-016</b>
<b>v.</b>	)	<b>Docket Number 14-260</b>
	)	
<b>AT&amp;T MOBILITY LLC</b>	)	
<b>Defendant</b>	)	
	)	
<b>For FCC Violations</b>	)	
<b>47 CFR 1.717 (2 counts)</b>	)	
<b>47 CFR 52.35 (6 counts)</b>	)	
<b>47 CFR 52.36 (6 counts) &amp;</b>	)	
<b>Ongoing Fraudulent Concealment Scheme</b>	)	

**Complainant's Reply to Defendant's Opposition to  
Motion/Petition to Reconsideration**

**Date: August 27, 2015**

- 1) The Order<sup>1</sup> for Dismiss under the statute of limitations 47 CFR § 415 should be reconsidered, reversed, remanded and proceed under FCC formal complaint process 47 CFR §§ 1.721 through 1.727<sup>2</sup>.
- 2) This Response is response to “AT&T’s August 20, 2015 Opposition to Motion to Reconsider” that Complainant Chelmowski provided no Documentation or Arguments to Reconsider FCC order dated July 10, 2015. The arguments are summarized with detailed factual support in this Response to AT&T’s Opposition to Motion to Reconsider.
- 3) To clarify and summarize these well pleaded and extensive factual support by Chelmowski including AT&T documents, third party sworn subpoena responses and Neustar subpoena response detailing apparent AT&T’s legal threat if Neustar releases any documentation in its possession with regards to the 2010 and 2011 porting requests, cancelations and rejects. Since the July 10, 2015 order statement of the case was virtually AT&T’s statements which January 26, 2015 reply provided as required by FCC law and FCC December 16, 2014 rules factual support using AT&T’s documents, third party sworn subpoena responses (received

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<sup>1</sup> In the Federal Communication Commission (“FCC”) Formal Complaint James Chelmowski (“Chelmowski”) v AT&T Mobility LLC (“AT&T”), documents referenced in this Response are December 11, 2014 FCC formal Complaint for 14 FCC violations and AT&T Fraudulent Concealment Scheme (“Complaint”), December 16, 2014 FCC rules determination letter (“Rules Determination”), January 16, 2015 AT&T Answer (“Answer”), January 26, 2015 Chelmowski (“Reply”), March 3, 2015 Motion to Compel FCC Rules Including but Not Limited to 47 CFR § 1.724 Answers and 47 CFR § 1.17- Truthful and Accurate Statements to the Commission (“Motion to Compel FCC Rules”), March 4, 2015 FCC letter ruling for March 3, 2015 Motion (“Motion Ruling”), July 10, 2015 FCC Order (“Order”), August 10, 2015 Motion/Petition to Reconsider (“Reconsider”) and August 19, 2015 Opposition to Petition to Reconsider (“Opp. Reconsider”).

<sup>2</sup> Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act. Legal and Constitutional Functions of Federal Communications Commission 47 CFR § 0.111 Serve as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules... Resolve complaints, including complaints filed under section 208 of the Communications Act, regarding acts or omissions of common carriers... The Consumer and Governmental Affairs Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services...

between December of 2013 and June of 2014) and sworn affidavits proving virtual every statement was false or deceptive See Reply and Motion to Compel Rules and Exhibit A – Table of Contents of filings and all Chelmowski’s filings.

- 4) US Supreme Court ruled in multiple cases, **“This equitable doctrine is read into every federal statute of limitation.”** Bailey v. Glover, 21 Wall. 342, 88 U.S. 348; and see Exploration Co. v. United States, 247 U. S. 435; Sherwood v. Sutton, 5 Mason 143. FCC also has history of equitable tolling statute of limitations.<sup>3</sup>

## **Requirements for Motion to Dismiss and/or Dismissal**

- 5) FCC order dated July 10, 2011 to dismiss because of the two statute of limitations should be reconsidered and remanded, because Plaintiff has met his burden of raising the right to relief above the speculative level. See, Chamberlain v. American Honda Finance Corp., 931 A.2d 1018, 1023 (D.C. 2007) (citing Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co., 870 A.2d 58, 62 (D.C. 2005); and Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1965 (2007)). In order to survive the motion to dismiss, plaintiff need only plead "enough facts to raise a reasonable expectation that discovery will reveal evidence." Twombly, 127 S. Ct. 1955, 1965. That is, plaintiff need only allege facts that, taken as true, are "suggestive of illegal conduct." Id., n. 8. The complaint contains more than "threadbare recitals of a cause of action's elements, supported by mere conclusory statements," and should survive the defendants' motion to dismiss. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).<sup>4</sup>

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<sup>3</sup> Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

<sup>4</sup> Rabin v. Dep't of State, No. 95-4310, 1997 U.S. Dist. LEXIS 15718. The court noted that pro se plaintiffs should be afforded "special solicitude."; Baldwin County Welcome Center v. Brown 466 U.S. 147,104 S. Ct. 1723,80 L. Ed. 2d 196,52 U.S.L.W. 3751 [pro se] complaint, "however inartfully pleaded" are held "to less stringent standards than

- 6) US Supreme Court rules "To decide the case we need look no further than the maxim **that no man may take advantage of his own wrong**. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently **been employed to bar inequitable reliance on statutes of limitations**." (Italics supplied.) *Glus v. Brooklyn Eastern District Terminal*, 359 U.S. p. 232, 79 S. Ct. at p. 762.
- 7) This case's Complaint, Chelmowski has provided more than sufficient factual allegations to raise his claims for relief above the speculative level. Indeed, the Complaint explains with extensive details sworn affidavits (see Exhibit C) and in hundreds of pages of factual support (see Exhibit A - AT&T documents and third party sworn subpoena response and required by 47 CFR §§ 1.721 through 1.727) of AT&T fraudulent concealment scheme which AT&T's only response is prohibited general denials (no required factual support or sworn affidavits) and unsupported hearsay (prohibited by 47 CFR § 1.724 and December 16, 2014 FCC "Rules Determination")<sup>5</sup>.
- 8) AT&T's January 16 Answer contained NO factual support (because there is none) as required by 47 CFR 1.724 and FCC Rules letter December 16, 2014 for any of AT&T's relevant statements for defense of AT&T fraudulent concealment and FCC violations 47 CFR §§ 1.717, 52.35, 52.36 as required by law.

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formal pleadings drafted by lawyers, see *Haines v. Kerner*, 404 U.S. 519,520 (1972). See also *Maclin v. Paulson*, 627 F.2d 83,86 (CA7 1980); *French v. Heyne*, 547 F.2d 994,996 (CA7 1976). Such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Haines*, supra, at 520 521. And, of course, the allegations of a complaint are generally taken as true for purposes of a motion to dismiss. *Cruz v. Beto*, 405 U.S. 319,322 (1972).

<sup>5</sup> Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

9) FCC is required by law to execute and enforce the provisions of this ACT (See, ACT Title 1 Sec. 1) which sole reason Chelmowski filed on March 3, 2015 Chelmowski filed "Motion to Compel FCC Rules" reference enforcement of the following FCC rules and/or laws 47 CFR § 1.724 Answers and 47 CFR § 1.17- Truthful and Accurate Statements to the Commission. No statement in the March 3 "Motion to Compel FCC Rules" requested the interrogatories instead it was details with factual support of numerous AT&T violations in the ACT which the FCC should be responsible to enforce (See, ACT Title 1 Sec. 1). The FCC "Motion Ruling" stated the Second Motion to Compel [dated 3/3/15] is premature and is denied to the extent it seeks to compel AT&T to respond to interrogatories however the FCC apparently has not ruled on the remainder of the Motion on Compel of Answer Rules 47 CFR § 1.724 Answers and 47 CFR § 1.17 (See Exhibit B, Motion without exhibits).<sup>6</sup>

### **Review of some facts**

10) Why did AT&T intentional conceal all the March and April porting rejections for the FCC through deceit and fraudulent concealment and intentionally conceal the response form Chelmowski despite required by law to send him a copy? Why did AT&T continue willfully rejecting request after the April 11, 2011 response to the FCC? Why did AT&T as promised the FCC in the April 11, 2011 not re-open this informal case when Chelmowski called AT&T on April 11, April 18, April 21, etc. proven in documents and AT&T phone logs? Why did AT&T in the September 22, 2011 letter to the FCC after AT&T Ms. Baker conducted a thorough review of Chelmowski's account, who disclosed AT&T porting rejection to the Illinois Attorney

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<sup>6</sup> Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

General (not knowledge of FCC law) then intentional deceived the FCC by fraudulent concealing all March and April 2011 porting rejections and provide massive false statements and deceptions to mask the fraudulent concealment?<sup>7</sup>

11) AT&T confirmed<sup>8</sup> and stated Mr. Chelmowski relied on AT&T alleged facts<sup>9</sup> which provided to Illinois Attorney General and FCC pursuant to 47 CFR §§ 1.717 and 1.17.<sup>10</sup>

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<sup>7</sup> Because in AT&T attorney's words "the Federal Communications Commission back in 2011 ... found any basis to proceed against AT&T." (see Exhibits D) Chelmowski and others would rely on the FCC no responses and immediately closing the informal case upon receipt of AT&T letters because they don't have the knowledge of the FCC then believe AT&T did nothing wrong by AT&T violations of FCC law, fraudulent concealment and deception.

<sup>8</sup> AT&T stated in January 16, 2015 Answer:

Paragraph 23. To show "fraudulent concealment" sufficient to justify tolling the applicable statute of limitations, Mr. Chelmowski would have to demonstrate that due to AT&T's alleged concealment, he was prevented from discovering his claims at the time they arose. It is plain that there was no "fraudulent concealment," and that Mr. Chelmowski was not prevented from learning of the fact of the failed port or the reasons for it—indeed, his repeated telephone calls to AT&T and complaints to the FCC and state officials in 2011 demonstrate that he was well aware of the facts and of his claims. He cannot now claim he was prevented from learning of the these issues by AT&T's alleged "concealment."

Paragraph 8. In March and April of 2011, AT&T received multiple porting requests from Choice One, on behalf of its wholesale customer, Ooma, and Ooma's retail customer, James Chelmowski, ... telephone numbers (including the 0400 number) from AT&T Mobility to Choice One.<sup>7</sup> ..., the 0400 number was not ported, first due to an incorrect account number on the Choice One LSR, then, after that was corrected, because of the pending LSR submitted by XO Communications the year before, which had never been modified or cancelled by XO.

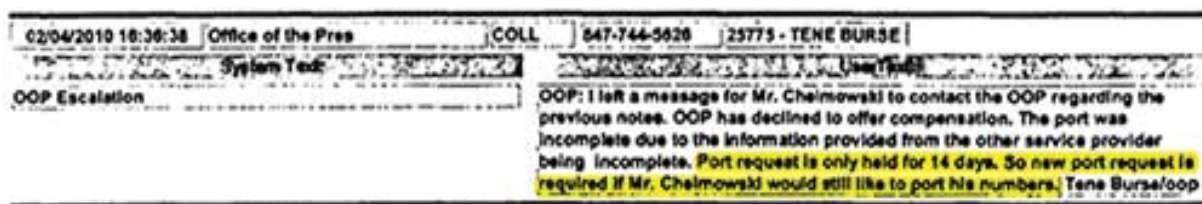
Paragraph 9. Mr. Chelmowski reports having contacted AT&T directly about the failed port request on numerous occasions around this time. AT&T explained to him at the time that the failure was caused initially by the incorrect LSR submitted by Choice One, and the "open port request" from XO Communications that was incorrect and was never corrected or cancelled.

<sup>9</sup> Sprint Communications Co. v. F.C.C., 76 F.3d 1221, 1226 (D.C. Cir 1996) ("In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took 'some misleading, deceptive or otherwise contrived action' to conceal information material to the plaintiff's claim.") (quoting Hobson v. Wilson, 737 F.2d 1, 34 (D.C. Cir. 1984)). Sprint Communications Co. v. F.C.C., 76 F.3d 1221, 1226 (D.C. Cir 1996) ("In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took 'some misleading, deceptive or otherwise contrived action' to conceal information material to the plaintiff's claim.") (quoting Hobson v. Wilson, 737 F.2d 1, 34 (D.C. Cir. 1984)).

"'Equitable estoppel . . . comes into play if the defendant takes active steps to prevent the plaintiff from suing in time.'" Gonzalez v. Internacional De Elevadores, S.A., 891 A.2d 227, 241 (D.C. 2006) (citation omitted); accord Chung v. DOJ, 333 F.3d 273, 278 (D.C. Cir. 2003) ("'Equitable estoppel' precludes a defendant, because of his own inequitable conduct ... from invoking the statute of limitations."). Although a plaintiff need not plead equitable estoppel in the complaint because it is "an affirmative defense that [the] defendant must prove," the plaintiff must set forth sufficient allegations to justify the application of the equitable estoppel doctrine if a defendant does "raise[] the statute of limitations as a defense." Koker v. Aurora Loan Servicing, LLC, No. 12-1069, 2013 WL 40320 at \*4 (D.D.C. Jan 3, 2013), quoting Firestone v. Firestone, 76 F.3d 1205, 1210 (D.C. Cir. 1996)

<sup>10</sup> "We turn now to the question of the possible tolling of the statute of limitations in this case on the basis of defendant misconduct, the domain of fraudulent concealment and equitable estoppel. Illinois has codified its doctrine of fraudulent concealment in a statute which provides that 'if a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled

- 12) AT&T could not and would not produce required details of these porting rejections sent to Neustar and other companies. AT&T in 2014 apparently legally threatened Neustar from producing documentation in its possession on the 2010 and 2011 porting requests and rejections.<sup>11</sup>
- 13) On or about January 15, 2014, AT&T produced a log entry dated February 4, 2010 (see Exhibit C-0001) confirming that the 2010 porting request was canceled in 2010 and not open in 2011, AT&T's Tene Burse "Port Request is held for 14 days. So new port request is required if Mr. Chelmowski would like to port his number" confirmed Chelmowski's 2010 porting request with incomplete information was in fact canceled by all parties (and no longer open which AT&T rejected repeatedly in 2011). This is also confirmed in AT&T porting manual (see Exhibit C-AT&T statements of AT&T alleged facts for the basis of these claims in 2011 to the Chelmowski and Illinois attorney General (apparently the reason AT&T fraudulent concealed these rejections from the FCC in 2011) which is the basis of these claims and AT&T inequitable conduct including Fraudulent Concealment, Equitable Estoppel, etc.



- 14) AT&T claimed that January 2010 porting request which AT&T had a valid reason to reject for incorrect account number was still open to Chelmowski and Illinois Attorney General in 2011, however willfully concealed the existence of any porting rejections to the FCC in 2011 when this

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thereto, the action may be commenced at any time within 5 years after' the entitled person discovers that he has such a cause of action." Norman Shropshear v. Corp. Counsel of the City of Chicago, et al., No. 00-4268, 275 F.3d 593 (7th Cir. 2001)

log and AT&T porting manuals, Neustar manuals, etc. state for this 2010 porting order to be open over 14 months later is impossible. If it was possible, AT&T would have produced required factual proof to contradict its logs, manual, Neustar, etc. which is required by law in 47 CFR 1.724 and December 16, 2014 Ruling letter.

15) See Motion to Compel Rules Exhibits A through D for more of AT&T's apparent lies/perjury/suborning perjury during arbitration hearing to conceal this log exposing AT&T false statements to the FCC, IAG, apparent perjury, fabrication of evidence, fraudulent concealment of the material facts of AT&T's willful porting rejections in March and April of 2011). Chelmowski narrowed the complaint to the essentials FCC violations and Fraudulent Concealment. However in AT&T deception scheme to mask failure to produce any acceptable factual support AT&T went on false person attacks. So, these items were needed to defend Chelmowski and expose AT&T total disregard of the laws and process to skirt the arbitration and FCC informal complaint. More these outrageous behaviors to skirt the law by AT&T is detailed with comprehensive factual support in the Reply and Motion to Compel FCC Rules.

16) Extensive false statements, deception, fraud etc. are detailed in the other filings with every statement has required factual support in the exhibits. See Exhibit A for table of contents of Chelmowski's filings. Exhibit D illustrates AT&T writing documents with concealment, deception, fraud, etc.

## **Equitable Doctrines (tolling statute of limitations)**

### **US Supreme Court rulings**



- 17) **“This equitable doctrine is read into every federal statute of limitation.”** Bailey v. Glover, 21 Wall. 342, 88 U. S. 348; and see Exploration Co. v. United States, 247 U. S. 435; Sherwood v. Sutton, 5 Mason 143. and see Exploration Co. v. United States, 247 U. S. 435; Sherwood v. Sutton, 5 Mason 143.
- 18) **“To decide the case we need look no further than the maxim *that no man may take advantage of his own wrong*. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently *been employed to bar inequitable reliance on statutes of limitations*.”** (Italics supplied.) Glus v. Brooklyn Eastern District Terminal, 359 U.S. p. 232, 79 S. Ct. at p. 762.

**FCC also has history of equitable tolling statute of limitations.**

- 19) Sprint Communications Co. v. F.C.C., 76 F.3d 1221, 1226 (D.C. Cir 1996) (“In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took ‘some misleading, deceptive or otherwise contrived action’ to conceal information material to the plaintiff’s claim.”) (quoting Hobson v. Wilson, 737 F.2d 1, 34 (D.C. Cir. 1984)). Sprint Communications Co. v. F.C.C., 76 F.3d 1221, 1226 (D.C. Cir 1996) (“In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took ‘some misleading, deceptive or otherwise contrived action’ to conceal information material to the plaintiff’s claim.”) (quoting Hobson v. Wilson, 737 F.2d 1, 34 (D.C. Cir. 1984)).
- 20) Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 21 As the Commission has explained the dismissal against equitable tolling - “[Where] there is no allegation of fraud or deceit, having

been practiced by the defendant upon complainant to prevent him from becoming aware of the facts which are the basis of its claim, there is no way of ... tolling the statute of limitations.”

## **Equitable Estoppel & Fraudulent Concealment**

21) “‘Equitable estoppel . . . comes into play if the defendant takes active steps to prevent the plaintiff from suing in time.’” *Gonzalez v. Internacional De Elevadores, S.A.*, 891 A.2d 227, 241 (D.C. 2006) (citation omitted); accord *Chung v. DOJ*, 333 F.3d 273, 278 (D.C. Cir. 2003) (“‘Equitable estoppel’ precludes a defendant, because of his own inequitable conduct ... from invoking the statute of limitations.”). Although a plaintiff need not plead equitable estoppel in the complaint because it is “an affirmative defense that [the] defendant must prove,” the plaintiff must set forth sufficient allegations to justify the application of the equitable estoppel doctrine if a defendant does “raise[] the statute of limitations as a defense.” *Koker v. Aurora Loan Servicing, LLC*, No. 12-1069, 2013 WL 40320 at \*4 (D.D.C. Jan 3, 2013), quoting *Firestone v. Firestone*, 76 F.3d 1205, 1210 (D.C. Cir. 1996)

22) Chelmowski’s comprehensive factual support of ATT’s inequitable conduct, fraud, fraudulent concealment and violations of 47 CFR §§ 1.717, 52.35, 52.36 as required by law. **(See exhibit A for comprehensive Table of Contents of Complaint and subsequent filings with over 50 highlighted items which provide comprehensive factual support Equitable Doctrines for Tolling).**<sup>12</sup>

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<sup>12</sup> “‘Equitable estoppel . . . comes into play if the defendant takes active steps to prevent the plaintiff from suing in time.’” *Gonzalez v. Internacional De Elevadores, S.A.*, 891 A.2d 227, 241 (D.C. 2006) (citation omitted); accord *Chung v. DOJ*, 333 F.3d 273, 278 (D.C. Cir. 2003) (“‘Equitable estoppel’ precludes a defendant, because of his own inequitable conduct ... from invoking the statute of limitations.”). Although a plaintiff need not plead equitable estoppel in the complaint because it is “an affirmative defense that [the] defendant must prove,” the plaintiff must

## Examples

- 23) September 22, 2011, AT&T's FCC informal complaint response so full of violations of false statements, deceit, fraud and fraud concealment that no AT&T employee would claim authorship to this date. Probably knowing intentional violations of 47 CFR § 1.17 could also be criminal under 18 USC § 1001.
- 24) Chelmowski never filed this informal complaint (see Exhibit C, Chelmowski's sworn affidavit statement). FCC order also proves that Chelmowski was never aware this claim existed until October 2013. AT&T production of the informal complaint also proves Chelmowski never filed it. Chelmowski was a customer of Verizon since March of 2011 not AT&T. Why would Chelmowski write "Customer" on the informal complaint? Chelmowski would have used his name, ex-customer or former customer if this was actual not a forged document. It clearly appears an AT&T employer was order to create this forged identity informal complaint by stating "Customer" repeatedly. Which is why Chelmowski received this reply in October 2013 not when he first received his March 23, 2011 in May of 2013 because he had absolutely no knowledge this complaint was ever filed.
- 25) AT&T failed to abide to FCC Answers requirements<sup>13</sup> and December 16, 2014 statement of rules in defense of the FCC violations, Fraudulent Concealment and Equitable Estoppel (equitable doctrines for tolling statute of limitations). Simply providing the minimum requirements under 47 CFR § 1.724:

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set forth sufficient allegations to justify the application of the equitable estoppel doctrine if a defendant does "raise[] the statute of limitations as a defense." Koker v. Aurora Loan Servicing, LLC, No. 12-1069, 2013 WL 40320 at \*4 (D.D.C. Jan 3, 2013), quoting Firestone v. Firestone, 76 F.3d 1205, 1210 (D.C. Cir. 1996)

<sup>13</sup> Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

- Proof of delivery of 2011 Informal Complaint to Chelmowski in 2011 (part of AT&T fraudulent concealment scheme)
- Actual complete documentation of all the March and April 2011 porting rejections of 847-768-0400 and proof the 2010 porting order was still open during all the 2011 porting rejections.
- Author of AT&T's September 22, 2011 NOIC to the FCC.
- AT&T internal investigation files for 2011 informal complaint (proving why the March and April 2011 porting rejections were not part of any NOIC letter to the FCC in 2011). As AT&T stated was not part of the fraudulent concealment scheme.
- Simple Sworn Affidavit that AT&T did not file the August 2011 informal complaint or had anything to do with the filing of the 2011 complaint.

### **How Could Chelmowski have more knowledge on FCC violations than the FCC?**

26) FCC<sup>14</sup> required by law to enforce the Provisions of the Communications Act of 1934 ("ACT")

with knowledge of the inability to port a phone number 847-768-0400 complaint dated March 23, 2011. (See AT&T Answer Exhibit 2 and 3).

27) FCC's Consumer and Government Bureau<sup>15</sup> 47 CFR § 0.111 primary responsibility "informally resolving individual informal complaints" could not provide its apparently because AT&T "misleading, deceptive or otherwise contrived action" to conceal information material to Chelmowski's claim"<sup>16</sup> April 11, 2011 Response to Notice of Informal Complaint (NOIC).

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<sup>14</sup> Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

Legal and Constitutional Functions of Federal Communications Commission 47 CFR § 0.111

Serve as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules... Resolve complaints, including complaints filed under section 208 of the Communications Act, regarding acts or omissions of common carriers... The Consumer and Governmental Affairs Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services...

<sup>15</sup> *Id.*

<sup>16</sup> Chief Justice Ginsburg ruled in *Sprint Communications Co. v. F.C.C.*, 76 F.3d 1221, 1226 (D.C. Cir 1996) ("In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took 'some misleading, deceptive or otherwise contrived action' to conceal information material to the plaintiff's claim.") (quoting *Hobson v. Wilson*, 737 F.2d 1, 34 (D.C. Cir. 1984))... "Silence does toll the statute of limitations, however, if defendant has an affirmative duty to disclose the relevant information to the plaintiff. See *Smith v. Nixon*, 606 F.2d 1183, 1190 (D.C.Cir.1979); see also *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248, 250 (9th Cir.1978).")

28) If Chelmowski was deemed to have more knowledge than the FCC in 2011 on FCC violations and anyone could claim Chelmowski discovered the FCC violations in 201 with all of AT&T intentional and willful deception and fraudulent concealment then of course AT&T would be barred from defense of Statute of Limitations due equitable doctrine<sup>17</sup> of Equitable Estoppel<sup>18</sup>.

29) Chelmowski clearly met his burden of raising the right to relief above the speculative level by providing extensive factual support with AT&T documentation and third party sworn subpoena response required by FCC formal complaint rules and FCC December 16, 2014 rules determinations for this case 47 CFR § 1.721 to 1.727.

30) The order to Dismiss this Claim should be reconsidered and reversed with this case proceeding to next stage of discovery.

**In other AT&T arguments in AT&T Answer with no required factual support:**

31) In their argument against application of the equitable tolling doctrine to the facts of this case, defendants have erroneously stated AT&T provided the truthful material facts to Chelmowski in his repeated telephone calls to AT&T (March and April of 2011), FCC informal complaint response and Illinois Attorney General and did not mislead Chelmowski on these material facts of the 2011 March and April porting rejections.

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<sup>17</sup> US Supreme Court ruled in multiple cases, "This equitable doctrine is read into every federal statute of limitation." *Bailey v. Glover*, 21 Wall. 342, 88 U. S. 348

<sup>18</sup> "Equitable estoppel . . . comes into play if the defendant takes active steps to prevent the plaintiff from suing in time." *Gonzalez v. Internacional De Elevadores, S.A.*, 891 A.2d 227, 241 (D.C. 2006) (citation omitted); accord *Chung v. DOJ*, 333 F.3d 273, 278 (D.C. Cir. 2003) ("Equitable estoppel" precludes a defendant, because of his own inequitable conduct ... from invoking the statute of limitations."). Although a plaintiff need not plead equitable estoppel in the complaint because it is "an affirmative defense that [the] defendant must prove," the plaintiff must set forth sufficient allegations to justify the application of the equitable estoppel doctrine if a defendant does "raise[] the statute of limitations as a defense." *Koker v. Aurora Loan Servicing, LLC*, No. 12-1069, 2013 WL 40320 at \*4 (D.D.C. Jan 3, 2013), quoting *Firestone v. Firestone*, 76 F.3d 1205, 1210 (D.C. Cir. 1996)

- 32) AT&T was required under FCC rules and/or laws 47 CFR § 1.724 and FCC 12/16/14 “Ruling letter” to provide comprehensive factual support. AT&T did not provide a single document of factual support (see “Reply” Paragraphs 24 through 86 and “Motion to Compel Rules” paragraphs 1 through 49 every Reply statement included reference of comprehensive factual support.
- 33) Mr. Chelmowski was not prevented from learning of the fact of the failed port or the reasons for it—indeed, his repeated telephone calls to AT&T and complaints to the FCC and state officials in 2011 demonstrate that he was well aware of the facts and of his claims.
- 34) AT&T could not prove the March and April 2011 porting rejections (see Answer paragraph 8<sup>19</sup> and Complaint paragraph 11 through 28) were disclosed in FCC communications in 2011. It appears AT&T was successful in skirting the law by providing the FCC willful mislead and concealment to avoid the FCC performing FCC legal requirements under 47 CFR §§ 0.111, 1.717, 1.724, 1.17, etc.
- 35) The dismissal for statute of limitations should fail for due to the equitable tolling doctrines. These items below were detailed in the FCC complaint, answer, reply and motions and exhibits see Exhibit A – Table of Contents of Chelmowski’s filings.
- 36) To clarify and summarize these well pleaded and extensive factual support including AT&T documents, third party sworn subpoena responses and Neustar subpoena response detailing apparent AT&T’s legal threat if Neustar releases any documentation in its possession with regards to the 2010 and 2011 porting requests, cancelations and rejects. Since the July 10, 2015 order statement of the case was virtually AT&T’s statements which January 26, 2015 reply provided as required by FCC law and FCC December 16, 2014 rules factual support using AT&T’s documents, third party sworn subpoena responses (received between December of 2013 and June of 2014) and sworn affidavits proving virtual every statement was false or deceptive.

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<sup>19</sup> In March and April of 2011, AT&T received multiple porting requests from Choice One, on behalf of its wholesale customer, Ooma, and Ooma’s retail customer, James Chelmowski, ... telephone numbers (including the 0400 number) from AT&T Mobility to Choice One.<sup>7</sup> ..., the 0400 number was not ported, first due to an incorrect account number on the Choice One LSR, then, after that was corrected, because of the pending LSR submitted by XO Communications the year before, which had never been modified or cancelled by XO.

See Reply paragraphs 32 through 86 and comprehensive factual support referred in exhibits (see Exhibit A see table of contents).

**All other AT&T defense also fail because of arguments in the Reply because of course FRAUD would also bar all AT&T defenses.**

- 37) AAA Arbitrator apparently had no Jurisdiction on Telecommunications Act and FCC Regulations. The arbitration was ruled only FCC has jurisdiction has jurisdiction for FCC as AT&T stated in Post hearing briefs (see Complaint Exhibits Ex-0036 to 0045) *Conboy v. AT&T Corp.*, 241 F.3d 242, 252-53 (2d Cir. 2001) (“[Because] the FCC is primarily responsible for the interpretation and implementation of the Telecommunications Act and FCC Regulations,” The FCC has jurisdiction Telecommunications Act and FCC Regulations not any arbitration per AT&T and agreed by the AAA Arbitrator ruling stated as apparent only reasoning of her ruling "AT&T Mobility which set up a complicated dispute resolution process and required it as the only method to resolve disputes between it and its customers.”
- 38) If AAA arbitration had any jurisdiction under Telecommunications Act and FCC Regulations, *Conboy v. AT&T Corp.*, 241 F.3d 242, 252-53 (2d Cir. 2001). If there is any statute which gives consumer arbitration the right to remove jurisdiction in any way from the FCC on implementation of the Telecommunication Act (essentially over turning *Conboy v AT&T Corp.*) and rules which none could be found, then of course Fraud cannot act as a bar to a subsequent suit on the same cause of action—thus preventing the application of res judicata. *Thomas v. Metra Rail Serv.*, No. 966 C 8489, 1997 U.S. Dist. LEXIS 16027, at \*9 n.2 (N.D. Ill. Oct. 6, 1997) (“The Court is mindful that a judgment obtained through fraud cannot act as a bar to a subsequent suit on the same cause of action—thus preventing the application of res judicata.”); *Remer v. Interstate Bond Co.*, 173 N.E.2d 425, 430 (Ill. 1961) (“If the order was obtained by fraud, as petitioner alleges, elementary principles of law require that relief be granted.”).

39) Supreme court reiterated the rule that extrinsic fraud is necessary to set aside a judgment based on fraud in *Chewning v. Ford Motor Company*, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003).

The court explained the difference between intrinsic and extrinsic fraud:

40) Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action."

41) In *Chewning*, we held "the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud." *Id.* at 82, 579 S.E.2d at 610. However, our holding in *Chewning* does not limit the finding of extrinsic fraud to misconduct of an attorney or an officer of the court. As we noted in *Evans*, fraud upon the court has been defined as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988).  
Fraud to the Court and Crime Fraud Exception ruling in *Toyota v. Biller* Arbitration by Judge Gary L Taylor (see Exhibit F)

42) *State Farm Fire & Casualty Co. v. Superior Court*, 54 Cal.App.4 625 (1997) is particularly instructive in this case because it involved a former employee of the client's legal department who testified that documents existed which were responsive to discovery requests, but were not produced... that evading production of evidence in discovery can be considered a fraud upon the court sufficient to trigger the crime-fraud exception to the attorney-client privilege. Judge Gary Taylor ruling in *Toyota v Biller* JAMS No 1220040045, January 4, 2011 (see Exhibit F).



## **FCC Precedent Ruling for Violation of 47 CFR 1.717 Informal Complaint**

- 43) FCC ruled on April 29, 2011 by Nancy A. Stevenson, the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau against CenturyLink IC No. 10-S0298 failure to prove delivery of Complaint Response to FCC and Complaint the look back period starts when the FCC rules and orders. FCC clearly requires documentation of proof of delivery stated in this ruling to be in compliance of the 47 CFR § 1.717. The complainant was given 45 days (billing statute of limitations) to convert the informal complaint to a formal complaint after the FCC order. No precedent for the deadline to file a formal complaint for a violation of not sending the tele\*communication company violating an informal complaint procedure, especially when deception, fraud, concealment is involved, to any date prior to a FCC ruling on the formal complaint violation.
- 44) Unfortunately because of AT&T intentional and willful deception, fraud and concealment this case was ruled as in the CenturyLink required by law by the Consumer Policy Division, Consumer & Governmental Affairs Bureau whose primary 47 CFR § 0.111 to resolve informal complaints and Chelmowski needed suffer the cost, time and expenses to pursue his rights directly to this FCC Formal Complaint. If AT&T did not provide in 2011 deception, fraud and concealment to the FCC this case would probably have been settled in 2011. Now only because of AT&T's choice of providing the FCC in 2011 deceptive, fraud and concealment on the basis of these claims were are here in 2015.
- 45) The July 10, 2015 order almost implies the FCC made some ruling or order giving Chelmowski six months after October 2013 first receipt and acknowledgement of a second fraudulent informal complaint filed by someone other than Chelmowski (see Exhibit C required sworn

affidavit). Chelmowski received no reply from the FCC when asked for a ruling on July 31, 2014 like the CenturyLink case IC No. 10-S0298. So apparently the only option to his rights heard was to file this FCC formal complaint and suffer the expense and time required in a FCC formal complaint. Then FCC without receiving a single document acceptable under 47 CFR § 1.724 is dismissing this case, too.

46) Chelmowski filed on July 31, 2014 informal complaint for FCC informal complaint violations 47 CFR § 1.717 within 2 years of discovery AT&T of this second 2011 in October of 2013 (confirmed by Chelmowski factual support, sworn affidavit required by FCC Formal Complaint rules also FCC confirms that was the October 2013 was Chelmowski's first knowledge of the second 2011 informal complaint) and that arbitration does not have jurisdiction for enforcing the Telecommunication ACT or FCC law. FCC did not rule on this July 2014 for informal complaint for failure and violations in accordance 47 CFR § 1.717 in rules 47 CFR §§ 1.717, .0111.

47) Chelmowski filed this Formal Complaint with violations from the July 31, 2014 informal complaint for violations of 47 CFR § 1.717 and new discovery of FCC violations 47 CFR §§ 52.36, 52.36 after knowledge learned after October 2014 to date detailed in paragraphs in the Summary of this filing after relying on AT&T statements to Chelmowski, the Illinois Attorney General, etc. in 2011. Plus, Chelmowski relied FCC closing the 2011 informal complaint immediately after AT&T responses that AT&T did not violate any FCC laws or rules because if the FCC was aware of this with the same facts Chelmowski had in 2011 by law 47 CFR § 0.111 FCC would investigated and try to resolve the informal complaint. Due diligence FRAUD and fraudulent concealment of basis of these claims were FCC violations slowing discovered from October 2013 through June of 2014 despite the FCC closing the 2011 informal complaints

because of AT&T's deceit, false statements and fraudulent concealment in 2011 which is the apparent reason the FCC was unable to do their primary function 47 CFR § 0.111.

48) Chelmowski should have been given a minimum of 30 days to 6 months after the first ruling or order that AT&T violated the FCC informal complaint rules 47 CFR § 1.717. This would be six months after July 10, 2015 or January 10, 2016. This FCC formal complaint was filed on December 11, 2014 before even the 30 day deadline August 10, 2016 or 6 month deadline of January 10, 2016 (and within 6 months of the informal complaint for violations of 47 CFR § 1.717). See Motion to Compel Rules Exhibit G-0026 to G-0029 and Exhibit G in this document).

49) Chelmowski's deserves the rights for this case should be ruled on its merits and not have AT&T be allowed to continue false statements, deception and fraudulent concealment of the facts to the basis of these case without having at least the FCC enforcing the ACT rules as detailed in the March 3, 2015 Motion to Compel Rules which was only denied on the basis it involved interrogatives not the enforcement of the Telecommunication ACT. US Supreme Court ruled "To decide the case we need look no further than the maxim **that no man may take advantage of his own wrong**. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently **been employed to bar inequitable reliance on statutes of limitations**." (Italics supplied.) *Glus v. Brooklyn Eastern District Terminal*, 359 U.S. p. 232, 79 S. Ct. at p. 762.

50) Chelmowski's detailed filings with comprehensive factual support of every statement including multiple equitable tolling doctrines and AT&T produce not a single acceptable factual support to deny these claims. AT&T own logs from February 4, 2010 prove that bases for AT&T defense is 100% false and this reason why AT&T will not produce a single document because AT&T has

not documents to prove any statement in its prohibited general denials (see Reply and Motion to Compel Rules). AT&T own signed documents for AT&T and AT&T legal department could not even get their own false statements on the basis of these claims consistent (see Exhibit D).

## **Summary**

51) Obtained only within the last year or two of this case and with required due diligence under the equitable tolling doctrines by Chelmowski became aware the facts necessary in this case dispute relying on the FCC informal complaint decision there were no basis for FCC violations by AT&T in 2011 and US Supreme Court ruling *Glus v. Brooklyn Eastern District Terminal*, 359 U.S. p. 232, 79 S. Ct. at p. 762. "To decide the case we need look no further than the maxim **that no man may take advantage of his own wrong ... been employed to bar inequitable reliance on statutes of limitations.**"

52) Chelmowski finally only found the following within in the last two years during the required due diligence for equitable toll the statute of limitations<sup>20</sup>:

53) No earlier than January 15, 2014 that AT&T had records of the 2010 porting request was in fact Canceled in 2010 and not open in 2011 (see Exhibit E).

54) No earlier than January 15, 2014 that AT&T called all internal and external porting documentation for 847-768-0400 from December 2009 to current, falsified AT&T attorney client

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<sup>20</sup> "We turn now to the question of the possible tolling of the statute of limitations in this case on the basis of defendant misconduct, the domain of fraudulent concealment and equitable estoppel. Illinois has codified its doctrine of fraudulent concealment in a statute which provides that 'if a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after' the entitled person discovers that he has such a cause of action." *Norman Shropshire v. Corp. Counsel of the City of Chicago, et al.*, No. 00-4268, 275 F.3d 593 (7th Cir. 2001)

privilege (see Complaint Exhibits Ex-0022 to 30, 0039 to 41, Reply Exhibits EX-0237 to 277, Motion to Compel Rules Exhibits A to D) .

55) On or about April 5, 2014, AT&T refused to fully complete subpoena request on all the porting transaction from 2009 to April of 2011 including all requests, rejections, cancelations, etc. which would have included whether the 2010 rejected request was still opened in 2011 after over 14 months (AT&T confirmed this request canceled on February 4, 2010<sup>21</sup>). AT&T apparently legally threaten Neustar if they disclosed these documents which Neustar confirmed was in their possession (see Complaint Exhibits Ex-0100, 142 to 147, Reply Exhibits Ex-0149 to 162, 182 to 187)

56) On October 18, 2013, Chelmowski found the existence of a second 2011 FCC informal complaint. Chelmowski never initiated this complaint and provide the FCC with required sworn affidavit to that fact (see Exhibit C). AT&T willfully concealed this from Chelmowski despite requirements under the law to provide Chelmowski a copy of this response. FCC confirms also the FCC only provided this response to Chelmowski on October 22, 2013 after October 18, 2013 (see Order paragraph 5). On January 16, 2015, provided by AT&T in (See Answer Exhibit 4), Chelmowski first found the actual filing which also by the words used clearly shows Chelmowski never filed this 2011 FCC informal complaint.

57) May 24, 2013, FCC stated was the first time Chelmowski was aware of AT&T false statements, deception and fraudulent concealment and October 22, 2013 for the second 2011 FCC informal complaint which was fraudulently filed<sup>22</sup>, too. Chelmowski along with Illinois Attorney General and other parties relied on FCC not investigating per 47 CFR §§ 1.717, 1.17, 0.111 and as FCC

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<sup>21</sup> Exhibit E – AT&T log confirming the 2010 porting request was canceled in 2010 and all AT&T statements on the 2011 to be false and fraudulent concealment of the facts which are the basis of these claims.

<sup>22</sup> Exhibit C – Sworn Affidavit required by FCC formal complaints to supplement required comprehensive factual support since general denials are prohibited by the FCC.

primary function 47 CFR §§ 0.111 to resolve informal complaints (FCC closed all informal complaints on the date the FCC received responses from AT&T with no response to Chelmowski) that Chelmowski had no FCC violations claims against AT&T.

58) On June 30, 2014, AT&T attorney Green after complete concealment of all porting transactions in arbitration communications and required arbitration approved discovery (approved by all parties) stated in March and April of 2011 in fact AT&T happened, statements in the arbitration prove AT&T falsified classification of all these porting transaction and documents as AT&T attorney client privilege. Toyota v. Biller, private arbitration Judge Gary L. Taylor ruling would indicate this is extrinsic fraud and FRAUD TO THE COURT deeming all orders to be considered void (see Exhibit F).

59) Multiple venues besides Chelmowski relied on AT&T statements to the FCC in 2011 to be 47 CFR § 1.17 Truthful and accurate statements to the Commission & willful violations of 18 USC § 1001, false statements, deception, fraudulent concealment of material facts which are the basis of these claims. By AT&T skirting the FCC laws in 2011, AT&T used this apparent fraudulent skirting the FCC laws against Chelmowski by stating “the Federal Communications Commission back in 2011 ... found any basis to proceed against AT&T.”

60) Other numerous examples of AT&T misconduct have been extensively detailed with the FCC’s required factual support in the Complaint, Reply and Motion to Compel FCC rules.

61) AT&T appears to have violated multiple time 47 CFR §§ 52.35, 52.36, 1.717, 1.724 and countless times of 47 CFR § 1.17<sup>23</sup>. Over 500 pages of third party sworn proof, AT&T

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<sup>23</sup> Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.  
Legal and Constitutional Functions of Federal Communications Commission 47 CFR § 0.111  
Serve as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules... Resolve complaints, including complaints filed under section 208 of the Communications Act, regarding acts or omissions of common carriers... The Consumer and

documentations, etc. shows these violations from 2011 through 2015. The FCC by law should investigate under 47 CFR §§1.717, 1.17, 0.111 and 1.721 through 1.727 and the ACT Title I-Sec. 1.

62) AT&T has also appeared deemed all Chelmowski's claims as 100% true by FCC Formal Complaint rules and every statement AT&T made as false. 47 CFR §1.724(d) states [Answer] "Averments in a complaint ... are deemed to be admitted when not denied in the answer [47 CFR §1.724(b) General denials or denials without factual support are prohibited]". AT&T only statements were prohibited general denials and contained not a single piece of required factual support. If AT&T statements had an ounce of truth AT&T would be able provide countless factual support in its possession however AT&T provide nothing.

63) US Supreme Court rules "To decide the case we need look no further than the maxim **that no man may take advantage of his own wrong**. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently **been employed to bar inequitable reliance on statutes of limitations**." (Italics supplied.) *Glus v. Brooklyn Eastern District Terminal*, 359 U. Sp. 232, 79 S. Ct. at p. 762.<sup>24</sup>

64) US Supreme Court ruled in multiple cases, "**This equitable doctrine is read into every federal statute of limitation.**" *Bailey v. Glover*, 21 Wall. 342, 88 U. S. 348; and see *Exploration Co. v.*

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Governmental Affairs Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services...

<sup>24</sup> "Equitable estoppel . . . comes into play if the defendant takes active steps to prevent the plaintiff from suing in time." *Gonzalez v. Internacional De Elevadores, S.A.*, 891 A.2d 227, 241 (D.C. 2006) (citation omitted); accord *Chung v. DOJ*, 333 F.3d 273, 278 (D.C. Cir. 2003) ("Equitable estoppel" precludes a defendant, because of his own inequitable conduct ... from invoking the statute of limitations."). Although a plaintiff need not plead equitable estoppel in the complaint because it is "an affirmative defense that [the] defendant must prove," the plaintiff must set forth sufficient allegations to justify the application of the equitable estoppel doctrine if a defendant does "raise[] the statute of limitations as a defense." *Koker v. Aurora Loan Servicing, LLC*, No. 12-1069, 2013 WL 40320 at \*4 (D.D.C. Jan 3, 2013), quoting *Firestone v. Firestone*, 76 F.3d 1205, 1210 (D.C. Cir. 1996)0

United States, 247 U. S. 435; Sherwood v. Sutton, 5 Mason 143. FCC also has history of equitable tolling statute of limitations.<sup>25</sup>

65) This FCC complaint should not be prejudice against Chelmowski because he is a pro se litigant<sup>26</sup>.

66) This case's complaint, Chelmowski has provided more than sufficient factual allegations [only required per FCC ruling Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997)] to raise his claims for relief above the speculative level. Indeed, the complaint explains with extensive details sworn affidavits (see Exhibit C) and in hundreds of pages of factual support (see Exhibit A - AT&T documents and third party sworn subpoena response and required by 47 CFR 1.721 through 1.727) of AT&T fraudulent concealment scheme.

67) AT&T by the same FCC strict rules admitted all Chelmowski's claims (including the tolling statutes) as true (similar to the July 2015 FCC ruling of strict rules on the statute of limitations).

FCC 47 CFR 1.724(d) state claims not denied [with comprehensive factual support and/or sworn

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<sup>25</sup> Sprint Communications Co. v. F.C.C., 76 F.3d 1221, 1226 (D.C. Cir 1996) ("In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took 'some misleading, deceptive or otherwise contrived action' to conceal information material to the plaintiff's claim.") (quoting Hobson v. Wilson, 737 F.2d 1, 34 (D.C. Cir. 1984)). Sprint Communications Co. v. F.C.C., 76 F.3d 1221, 1226 (D.C. Cir 1996) ("In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took 'some misleading, deceptive or otherwise contrived action' to conceal information material to the plaintiff's claim.") (quoting Hobson v. Wilson, 737 F.2d 1, 34 (D.C. Cir. 1984)).

Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 21 As the Commission has explained the dismissal against equitable tolling - "[Where] there is no allegation of fraud or deceit, having been practiced by the defendant upon complainant to prevent him from becoming aware of the facts which are the basis of its claim, there is no way of ... tolling the statute of limitations."

**Chelmowski v AT&T Mobility case is full of factual documented fraud and deception practiced by the defendant AT&T, therefore based FCC ruling in Valenti v. AT&T and Sprint v. FCC should not have be dismissed (just a couple cases among many supporting this case should not have been dismissed).**

<sup>26</sup> Rabin v. Dep't of State, No. 95-4310, 1997 U.S. Dist. LEXIS 15718. The court noted that pro se plaintiffs should be afforded "special solicitude."; Baldwin County Welcome Center v. Brown 466 U.S. 147,104 S. Ct. 1723,80 L. Ed. 2d 196,52 U.S.L.W. 3751 [pro se] complaint, "however inartfully pleaded" are held "to less stringent standards than formal pleadings drafted by lawyers, see Haines v. Kerner, 404 U.S. 519,520 (1972). See also Maclin v. Paulson, 627 F.2d 83,86 (CA7 1980); French v. Heyne, 547 F.2d 994,996 (CA7 1976). Such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Haines, supra, at 520 521. And, of course, the allegations of a complaint are generally taken as true for purposes of a motion to dismiss. Cruz v. Beto, 405 U.S. 319,322 (1972).



affidavits] are deemed admitted therefore all Chelmowski's 12/11/14 claims were admitted by AT&T including the Fraudulent Concealment , Equitable Estoppel and Equitable Tolling of the Statute of Limitations. No proof that the 2010 port was open in 2011, no porting documents, no proof on why AT&T concealed all 2011 porting request from the FCC in 2011, AT&T concealed these replies from Chelmowski to intentional mask FCC violations<sup>27</sup> from him, no required proof of delivery of the required by law, etc.. Instead AT&T deception and concealment scheme continued with the AT&T January 16, 2015 Answer and continued knowing false character assassination of Chelmowski to try its deception of FCC (Chelmowski provided a sworn affidavit and extensive supporting factual backup on January 26, 2015 proving these statements were false and potential defamation) from the facts which are the basis of this Complaint.<sup>28</sup>

68) Based on all information provided to the FCC in this case by both parties this case meets requirements to proceed under the Telecommunication ACT and FCC formal complaint rules and should not be dismissed under strict statute of limitations with the extensive factual support documentation provided for fraud and equitable tolling doctrines. Chelmowski has met his burden of raising the right to relief above the speculative level required by law.

69) Chelmowski prays that FCC rules are enforced and require AT&T to abide to the FCC law and rules.

70) Chelmowski prays his given his rights as a consumer under the Telecommunication Act and this case be heard and ruled on its merits.

71) Chelmowski prays that FCC reconsiders the July 10, 2015 Order, reverses the Motion to Dismiss and proceeds to the discovery stage of the FCC formal complaint process.

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<sup>27</sup> Exhibit G – FCC case

<sup>28</sup> Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

Respectfully submitted,

By:

A handwritten signature in cursive script, appearing to read 'J. Chelmowski', written over a horizontal line.

Complainant, James Chelmowski

James Chelmowski  
Complainant  
6650 N Northwest Hwy  
Chicago, IL 60631

Date: August 27, 2015

# EXHIBIT A

# James Chelmowski v. AT&T Mobility LLC

**December 11, 2014 - FCC Formal Complaint**

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**Production Exhibits Available and will be produced soon.**

Full Hearing Transcripts - Available and will be produced in 2nd production

Full AT&T production of 1/14/14 Documents - Available and will be produced in 2nd production

Full Complainant evidence production - Available and will be produced in 2nd production

Full XO Subpoena - Available and will be produced in 2nd production

Full OOMA Subpoena - Available and will be produced in 2nd production

AT&T FCC Discovery Production

Proofs, Cases and Case law will be produced after AT&T FCC formal complaint discovery



# James Chelmowski v. AT&T Mobility LLC

**January 26, 2015 - FCC Formal Complaint -Reply**

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# James Chelmowski v. AT&T Mobility LLC

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# EXHIBIT B

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON DC 20554

IN THE MATTER OF:	)	
	)	
JAMES CHELMOWSKI	)	
Complainant	)	FILE NO. EB-14-MD-016
	)	Docket No. 14-260
v.	)	
	)	
AT&T MOBILITY LLC	)	
Defendant	)	
	)	
For FCC Violations	)	
47 CFR 1.717	)	
47 CFR 42.35	)	
47 CFR 42.36 &	)	
Fraudulent Concealment Scheme	)	
	)	

**Motion to Compel FCC Rules**  
Including but Not Limited to 47 CFR § 1.724 Answers and  
47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

Date: March 3, 2015

# James Chelmowski v. AT&T Mobility LLC

## Motion to Compel FCC Rules Including but Not Limited to 47 CFR § 1.724 Answers and 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

IN THE MATTER OF:	)	
	)	
JAMES CHELMOWSKI	)	
Complainant	)	FILE NO. EB-14-MD-016
	)	Docket No. 14-260
v.	)	
	)	
AT&T MOBILITY LLC	)	
Defendant	)	
	)	
For FCC Violations	)	
47 CFR 1.717	)	
47 CFR 42.35	)	
47 CFR 42.36 &	)	
Fraudulent Concealment Scheme	)	

**Motion to Compel FCC Rules**  
Including but Not Limited to 47 CFR § 1.724 Answers and  
47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

1. NOW COMES the Complainant JAMES CHELMOWSKI ("Chelmowski") and in his Motion to Compel FCC Rules including but not limited to 47 C.F.R. § 1.724 Answers and 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission and states the following:

2. AT&T Mobility LLC (AT&T) continuing attempts to conceal the facts of AT&T FCC violations and fraudulent concealment in this Formal Complaint process includes willfully violating 47 CFR § 1.17 of the Communications Act of 1934. Ms. Marlene H. Dortch, FCC Secretary on July 18, 2007 ORDER File No. EB-06-IH-2112 Docket FCC 07-125<sup>1</sup> stated in regards to 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission stated:

35. The Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”<sup>2</sup> “Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.”<sup>3</sup> Misrepresentation is “a false statement of fact made with intent to deceive.”<sup>4</sup> Lack of candor is concealment, evasion, **or** other failure to be fully informative, accompanied by intent to deceive.<sup>5</sup> Intent to deceive is established if a licensee knowingly makes a false statement,<sup>6</sup> and can also be inferred when the surrounding circumstances clearly show the existence of an intent to deceive.<sup>7</sup> The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.<sup>8</sup>

3. AT&T conduct before the FCC should require the FCC to seek all the facts in this case by the rules of this FCC formal complaint process and required AT&T to adhere to all rules required by the FCC including producing all requirements in this formal complaint process including but limited to 47 CFR §1.724 (f) & (g). AT&T should not be allowed to continue this contemptuous behavior providing concealment of the material facts, false and misleading

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<sup>1</sup> Exhibit G - Ms. Marlene H. Dortch, FCC Secretary on July 18, 2007 ORDER File No. EB-06-IH-2112 Docket FCC 07-125 Complete Order

<sup>2</sup> See *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (*Contemporary Media*)),

<sup>3</sup> Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1210-11 760(1986)).

<sup>4</sup> *Fox River Broadcasting, Inc., Order*, 93 F.C.C. 2d 127, 129 (1983) (*Fox River Order*). A false certification may also constitute a misrepresentation. *San Francisco Unified School District, Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd 13326, 13334 ¶ 19 nn.40- 41 (2004)(subsequent history omitted).

<sup>5</sup> An applicant has a duty to be candid with all facts and information before the Commission, regardless of whether that information was elicited. See *Fox River Order*, 93 F.C.C. 2d at 129 ¶ 6.

<sup>6</sup> *Leflore Broadcasting, Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980)

<sup>7</sup> *American International Development, Inc., Memorandum Opinion and Order*, 86 FCC 2d 808, 816 0.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

<sup>8</sup> *Contemporary Media*, 214 F.3d at 196.



information to the FCC<sup>9</sup>. For the “Federal Communications Commission”, which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter 47 U.S.C. § 151.

### **Related Background**

4. The evidence of these 47 CFR § 1.17 violations are evident in AT&T three written response requiring statement of facts for NOIC FCC complaints.
5. AT&T informal complaint FCC 11-C00292341<sup>10</sup> NOIC response 4/1/11 - inability to port 847-768-0400. AT&T rejected complete and accurate porting request 5 times<sup>11</sup> before this letter to the FCC and AT&T continue to reject a complete and accurate porting request after this letter. AT&T Manager of FCC Appeal Bureau, Margaret Trammell mislead the FCC by misleading, deception and complete concealment<sup>12</sup> of the only material facts the AT&T 2010 March and April porting requests and rejections.<sup>13</sup>
6. AT&T informal complaint FCC 11-C00325771<sup>14</sup> NOIC response 9/22/11. AT&T apparently because of 47 CFR § 1.17 refused to provide an author to this letter dated 9/22/11. AT&T anonymous letter<sup>15</sup> mislead the FCC by deception and concealment again by complete concealment of the only material facts the 2011 March and April porting requests and rejections.<sup>16</sup>

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<sup>9</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

<sup>10</sup> Exhibit B-0008

<sup>11</sup> Exhibit B-0003

<sup>12</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

<sup>13</sup> Exhibit B-0004

<sup>14</sup> Exhibit B-0012

<sup>15</sup> 47 CFR § 1.724 (f) (2) (ii) requires identification of all authors ; Exhibit B-0012

<sup>16</sup> Exhibit B-0003

7. AT&T 1/16/15 FCC Answer to the (12) porting violations, (2) informal complaint violations and fraudulent concealment. AT&T refused to provide required factual support only unacceptable general denials.<sup>17</sup> Mislead the FCC on this concealment of required factual evidence by false unrelated personal attacks and character assassination. AT&T could not even provide a single porting document or required proof of delivery<sup>18</sup> of the FCC informal complaints to Mr. Chelmowski. Instead created a scheme to mislead and deceive the FCC on the issues by providing un-related false character assignments and defamation against Mr. Chelmowski.<sup>19</sup> Why did AT&T conceal these required AT&T documents because they would contradict all AT&T statements confirmed by Neustar<sup>20</sup>, XO<sup>21</sup> and OOMA<sup>22</sup> sworn subpoena? Outlined in Mr. Chelmowski 1/26/15 reply providing evidence through third party subpoena documents and AT&T documentation that virtually every statement in AT&T Answer was false.

**47 CFR §1.17 - Truthful and Accurate Statements to the Commission FCC's**

**Quintessential Regulatory Demand<sup>23</sup> from FCC's Licensee (like AT&T)**

8. FCC Marlene H. Dortch, Secretary on July 18, 2007 ORDER File No. EB-06-IH-2112 Docket FCC 07-125<sup>24</sup> stated:

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<sup>17</sup> Mr. Chelmowski January 26, 2015 reply - ¶¶ 56 to 86

<sup>18</sup> Exhibit G-0026 to 29 - FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in ¶ 4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation (47 CFR 1.717)

<sup>19</sup> Mr. Chelmowski January 26, 2015 Affidavit #1

<sup>20</sup> Neustar Subpoena response - Exhibit B-0001; January 26, 2015 Reply Exhibits Ex-0182 to 187

<sup>21</sup> XO Subpoena response - January 26, 2015 Reply Exhibits Ex-0188 to 213

<sup>22</sup> OOMA Subpoena response January 26, 2015 Reply Exhibits Ex-0214 to 236

<sup>23</sup> California Broadcasting Corporation, 2 FCC Rcd 4175,4177 (Rev. Bd. 1987) (italics in original)

<sup>24</sup> Exhibit G - Ms. Marlene H. Dortch, FCC Secretary on July 18, 2007 ORDER File No. EB-06-IH-2112 Docket FCC 07-125 Complete Order

## B. Misrepresentation and Lack of Candor

**34.** Section 1.17 of the Commission's Rules prohibits misrepresentations and lack of candor in Commission filings.<sup>25</sup> "The bedrock requirement for absolute truth and candor from a Commission licensee or from a licensee or applicant is, simply stated, this agency's *quintessential* regulatory demand."<sup>26</sup> Material misrepresentations to the Commission or an intentional lack of candor with respect to matters affecting an applicant's basic eligibility status are two species of misconduct that thoroughly disqualify applicants for the public trust embodied in a Commission license.<sup>27</sup> Where an applicant has knowingly attempted to mislead the Commission on an underlying matter of decisional import, complete disqualification of such an untrustworthy licensee or applicant has consistently resulted.<sup>28</sup> As the Court of Appeals for the D.C. Circuit stated:

[A]pplicants before the FCC are held to a high standard of candor and forthrightness. The Commission must license [thousands of] stations in the public interest, and therefore relies heavily on the completeness and accuracy of the submissions made to it. . . Thus, "applicants . . . have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate."<sup>29</sup>

**35.** The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."<sup>30</sup> "Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission."<sup>31</sup> Misrepresentation is "a false statement of fact made with intent to deceive."<sup>32</sup> Lack of candor is concealment, evasion, **or** other failure to be fully informative, accompanied by intent to deceive.<sup>33</sup> Intent to deceive is established if a licensee knowingly makes a false statement,<sup>34</sup> and can also be inferred when the surrounding circumstances clearly show the existence of an intent to

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<sup>25</sup> See 47 C.F.R. 1.17 - Truthful and Accurate Statements to the Commission.

<sup>26</sup> California Broadcasting Corporation, 2 FCC Rcd 4175,4177 (Rev. Bd. 1987) (*italics in original*)

<sup>27</sup> See, e.g., RKO General, Inc. v. FCC, 670 F.2d 215 (D.C. Cir. 1981); WHW Enterprises, Inc. v. FCC, 753 F.2d 1132 (D.C. Cir. 1985); Sea Island Broadcasting Corp. of S.C. v. FCC, 627 F.2d 240 (D.C. Cir. 1980); FCC v. WOKO, 329 US. 223 (1946).

<sup>28</sup> See, e.g., Contemporary Media, Inc., 13 FCC Rcd 14,437 (1998); Catocin Broadcasting Corp. of New York, 2 FCC Rcd 2126,2136-38 (Rev. Bd. 1987); TeleSTAR, Inc., 2 FCC Rcd 5 (Rev. Bd. 1987); Mid-Ohio Communications, Inc., 104 FCC 2d 572 (Rev. Bd. 1986); Bellingham Television Associates, Ltd., 103 FCC 2d 222 (Rev. Bd. 1986).

<sup>29</sup> See WHW Enterprises, 753 F.2d at 1139 (internal citations omitted).

<sup>30</sup> See Contemporary Media, Inc., v. FCC, 214 F.3d 187, 193 (D.C. Cir. 2000) (Contemporary Media)),

<sup>31</sup> Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1210-11 760(1986)).

<sup>32</sup> Fox River Broadcasting, Inc., Order, 93 F.C.C. 2d 127, 129 (1983) (Fox River Order). A false certification may also constitute a misrepresentation. San Francisco Unified School District, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 ¶ 19 nn.40- 41 (2004)(subsequent history omitted).

<sup>33</sup> An applicant has a duty to be candid with all facts and information before the Commission, regardless of whether that information was elicited. See Fox River Order, 93 F.C.C. 2d at 129 ¶ 6.

<sup>34</sup> Leflore Broadcasting, Co., Inc. Y. FCC, 636 F.2d 454,462 (D.C. Cir. 1980)

deceive.<sup>35</sup> The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.<sup>36</sup>

9. AT&T provided no required factual support<sup>37</sup> for their defense for the (6 counts) 42.35, (6 counts) 42.36 and (2 counts) 1.717. AT&T answer omitted the details including dates of the at least six 2011 AT&T porting rejections in March and April of 2011.<sup>38</sup> Concealed details of these 2011 porting rejections are in AT&T possession including but not limited to communications with NPAC<sup>39</sup>, internal documents and external documents, etc. AT&T in its possession has proof of delivery or not delivered<sup>40</sup> the required copies of 2011 NOIC to Mr. Chelmowski<sup>41</sup>, the author of the 9/22/11 NOIC letter<sup>42</sup>, case files of the 2011 FCC informal complaint investigations which concealed the AT&T March and April 2011 rejections, etc. AT&T has concealed the AT&T motive on these massive disregard FCC rules, regulations and laws (and Mr. Chelmowski's rights) by providing the FCC false statements 1.17, concealing correspondence, case files, emails during 2011, etc. AT&T actions in 2014 AAA mandatory arbitration process appear to be perjury in the AAA arbitration<sup>43</sup>, concealment of discovery and Neustar subpoena responses of relative facts<sup>44</sup>, spoilage of evidence<sup>45</sup>, alleged

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<sup>35</sup> *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 0.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

<sup>36</sup> *Contemporary Media*, 214 F.3d at 196.

<sup>37</sup> Answer 1.724 and 12/16/14 letter

<sup>38</sup> *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n. 39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983) (Commission stated that "the absence of direct evidence of motive is not significant where the record otherwise clearly establishes that deceptive conduct has occurred.").

<sup>39</sup> Neustar Subpoena response - Exhibit B-0001; January 26, 2015 Reply Exhibits Ex-0182 to 187

<sup>40</sup> Exhibit E-0003 to 5; Exhibit G-0026 to 29 - FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in ¶ 4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation (47 CFR 1.717)

<sup>41</sup> *id.*

<sup>42</sup> 47 CFR § 1.724 (f) (2) (ii) requires identification of all authors ; Exhibit B-0012

<sup>43</sup> Exhibit A

<sup>44</sup> Exhibit B

<sup>45</sup> Exhibit C

obstructing witnesses<sup>46</sup>, false defamation of character like attacks on Mr. Chelmowski character<sup>47</sup>, concealing details of the direct involvement of AT&T executives with these FCC violations<sup>48</sup>,etc.

10. The only reason this formal case exist is because AT&T 2011 (6) porting rejections of a complete and accurate porting request and AT&T concealment of these porting in the April 2011 informal complaint by AT&T violations of 47 CFR § 52.35 (6 times), 52.36 (6 times), 1.717 and 1.17 (fraudulent concealment)<sup>49</sup>. AT&T abused the trust the FCC gives FCC license in 47 CFR § 1.17 to damage Mr. Chelmowski and violations of his rights to his vanity phone number under the FCC "ACT". Then AT&T also refused to provide Mr. Chelmowski with the required copy of the NOIC. AT&T had the ability to port the vanity number after the 4/11/11 NOIC to FCC however decided to continuing rejecting a complete and accurate porting request through on or about 4/25/11.
11. AT&T continuing disregard to 47 CFR § 1.17 deceptive and misleading statements to the FCC on January 16, 2015 Answer conceal AT&T March and April violations of 47 CFR § 52.35 & 53.36 plus April 11, 2011 and September 22, 2011 violations of 47 CFR § 1.717 and 1.17. A complete disregard of FCC formal complaint process by refusing to providing required factual proof of AT&T alleged statements. Answer statement including without any factual support:

Referencing to March and April 2011:

Paragraph 8. In March and April of 2011, AT&T received multiple porting requests from Choice One, on behalf of its wholesale customer, Ooma, and Ooma's retail customer, James Chelmowski, to port 4 telephone numbers (including the 0400 number) from AT&T Mobility to Choice One. While the other three numbers were ported successfully, the 0400 number was not ported, first due to an incorrect account number on the Choice One LSR, then, after that was

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<sup>46</sup> Exhibit A-0052 to 55

<sup>47</sup> Mr. Chelmowski January 26, 2015 Affidavit 1

<sup>48</sup> Exhibit F

<sup>49</sup> Exhibit B-0001, B-0003, B-0004, B-0008

corrected, because of the pending LSR submitted by XO Communications the year before, which had never been modified or cancelled by XO.

Reference to the April 11, 2011 NOIC to FCC Informal complaint 11-C00292341<sup>50</sup>.

Paragraph 10. On March 23, Mr. Chelmowski filed an informal complaint with the FCC regarding the failed port of the 0400 number.<sup>11</sup> AT&T responded to the FCC, on April 11, 2011, with a copy to Mr. Chelmowski, essentially stating that it attempted to contact Mr. Chelmowski to discuss or resolve the complaint, but was unable to reach him.

Reference to the September 22, 2011 NOIC to FCC Informal complaint 11-C00325771.<sup>51</sup>

Paragraph 14. On August 31, 2011, AT&T received from the FCC an informal complaint filed by Mr. Chelmowski to which it responded, on September 22, 2011, with a copy to Mr. Chelmowski.<sup>17</sup> In its response, AT&T explained that the 2011 port did not go through due to the open port request made by XO Communications a year earlier.

12. April 11, 2011 FCC 11-C00292341<sup>52</sup> NOIC response 47 CFR § 1.17 (a) concealing AT&T March and April 2011 porting rejections<sup>53</sup>.

Response to Notice of Informal Complaint (NOIC)

Date: 4/11/11

Federal Communications Commission

Consumer & Governmental Affairs Bureau Complainant's Name: James Chelmowski

Consumer Inquiries and Complaints Division File No.: 11-C00292341

445 12th Street

Response Type: Other

Washington, D.C. 20554

Service Date: 4/13/11

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**INVESTIGATION SUMMARY:**

AT&T received a Federal Communications Commission (FCC) inquiry from James Chelmowski regarding the inability to port service. Margaret Trammell, AT&T Customer Advocacy, called Mr. Chelmowski left message acknowledging complaint and provided her contact information in the event of questions during the investigation.

AT&T made several attempts to reach Mr. Chelmowski to discuss the FCC inquiry, no response has been received. AT&T will close complaint and this time but will re-open if Mr. Chelmowski responds at a later date.

Sincerely,  
Margaret Trammell  
Manager - FCC Appeals Bureau  
CC: James Chelmowski

13. September 22, 2011 FCC 11-C00325771<sup>54</sup> NOIC response 47 CFR § 1.17 (a) with No references to A&T March and April 2011 porting rejections<sup>55</sup> to date AT&T refuses to

<sup>50</sup> AT&T January 16, 2015 Answer; Exhibit B-0001, Exhibit B-0008

<sup>51</sup> AT&T January 16, 2015 Answer; Exhibit B-0001, Exhibit B-0012

<sup>52</sup> Exhibit B-0008

<sup>53</sup> "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

provide the author of this NOIC letter. AT&T's logs indicate the author is a Director of AT&T<sup>56</sup>.

Response to Notice of Informal Complaint (NOIC)

Date: September 22, 2011

Federal Communications Commission

Consumer & Governmental Affairs Bureau

Consumer Inquiries and Complaints Division

445 12th Street

Washington, D.C. 20554

Complainant's Name: James Chelmowski

Agency File Number: 11-C00325771-1

Response Type: Other

Service Date: August 31, 2011

Company File Number: CM20110831\_26702265

AT&T Mobility ("AT&T") is in receipt of the above-referenced customer's complaint and appreciates the opportunity to respond. Specifically, James Chelmowski claims that AT&T is blocking the porting of his wireless number ending in 0400. Mr. Chelmowski also alleges that AT&T destroyed him, harassed him and his family and put him in the hospital. AT&T denies all of these allegations.

Please be advised that AT&T has made numerous attempts previously to speak with and assist Mr. Chelmowski with regards to his complaint. To date, Mr. Chelmowski has not returned any of our calls.

AT&T conducted a thorough review of Mr. Chelmowski's account. AT&T determined that, on January 18, 2010, Mr. Chelmowski attempted to port his wireless number ending in 0400 to XO Communications. The port request was denied because the account number provided in the request was incorrect. For security reasons and in accordance with FCC rules, when a customer ports their number to another wireless provider, information necessary to validate the current account must be submitted by the new provider. If this information is not correct, the port request is denied. AT&T attempted on a number of occasions to inform Mr. Chelmowski of the status of the port and to instruct him on the appropriate path forward.

Mr. Chelmowski's account was ultimately deactivated due to non-payment. Mr. Chelmowski had a past due balance on his account. Pursuant to normal collection procedures, his account was cancelled on May 15, 2011. AT&T believes the past due balance of \$345.88 reflects valid and appropriate charges for services rendered to Mr. Chelmowski. AT&T attempted to work with Mr. Chelmowski in regard to the charges and believes he understood the amount that was past due. The account was sent to an outside collection agency on June 18, 2011. Because Mr. Chelmowski's account is currently inactive and service is no longer being provided to that number, the number is not eligible to be ported. AT&T is more than happy to work with the Commission and Mr. Chelmowski to re-activate his account so that he may port his 0400 number to another provider.

With regards to Mr. Chelmowski's allegations regarding treatment he received by AT&T, we deny these claims and note that they are not within the subject matter jurisdiction of the Commission. If Mr. Chelmowski would like to discuss his complaint further or discuss re-activating his account for purposes of porting to another provider, he may contact Nate Camper at 1-501-862-2002. In the alternative, we are happy to work with the Commission to assist Mr. Chelmowski in his efforts to port the 0400 number to another carrier. We trust this letter addresses your concerns regarding this complaint.

Sincerely,

AT&T Office of the President

CC: James Chelmowski

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<sup>54</sup> Exhibit B-0012; Exhibit B-0001; Exhibit B-0003; Exhibit B-0004

<sup>55</sup> "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

<sup>56</sup> Exhibit B-0012 entry 2 through 5



**AT&T disregard to 1.717 Refuses to Proof of Delivery of Required Copy of NOIC to Mr. Chelmowski**

14. AT&T answer stated in paragraph 29 "AT&T responded with copies to Mr. Chelmowski" and refusal to provide required proof of delivery.<sup>57</sup> AT&T provided proof of delivery of the March 17, 2011 termination letter to AAA arbitration<sup>58</sup> and August 14, 2014 NOIC proof of delivery.<sup>59</sup> Why would AT&T not provide proof of delivery of the 4/11/11 and 9/22/11 NOIC letters? FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in paragraph #4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation [47 CFR § 1.717]. Ms. Stevenson ruled and ordered the FCC statute of limitations clock only begins on the date of her ruling not the events or violations of [47 CFR § 1.717]. FCC rules, order and rulings require proof of delivery of these documents to Mr. Chelmowski, without proof of delivery it would be clear and convincing evidence of violations to [47 CFR § 1.717] and the fraudulent concealment of AT&T responses to the FCC.<sup>60</sup>

**A T&T January 16, 2015 - Alleged Footnote "Motion" for AT&T not to be required to abide the FCC rules including the 47 C.F.R § 1.724(f) & (g)**

15. AT&T Answer on January 16, 2015 current attempt to continue the fraud, deceit and concealment<sup>61</sup> of the facts of the basis of this claim.<sup>62</sup>

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<sup>57</sup> Exhibit G-0026 to 29 - FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in paragraph #4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation (47 CFR 1.717)

<sup>58</sup> Exhibit E-0004 to 5

<sup>59</sup> Exhibit E-0003

<sup>60</sup> Exhibit G-0026 to 29- FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in paragraph #4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation (47 CFR 1.717)

<sup>61</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).



16. Below is the Footnote "Motion" hidden on page 13 footnote 41 on January 16, 2015 FCC

Answer:

Footnote 41 - To the extent necessary, AT&T hereby requests a waiver from the requirements of Rule 1.724(f), pursuant to Rules 1.724(j) and 1.3. Given the propensity of Mr. Chelmowski to verbally abuse AT&T's employees, barrage its executives with emails, and impose the costs of serial litigation over the loss of a phone number that was seldom if ever used, AT&T submits that there is good cause to waive the requirement to identify additional persons and documents in this instance, particularly where, as here, both parties already have had a full opportunity to take discovery regarding the claims alleged. AT&T does not object to waiving this requirement in connection with Mr. Chelmowski's reply.

17. This footnote "Motion" by AT&T does not conform to the 47 C.F.R. § 1.727 Motions<sup>63</sup> and

Federal Rules of Procedures Rule 10 Forms of Pleadings<sup>64</sup> by AT&T attorney Michael

Goggin practicing law since 1991 according to avvo.com.

18. This footnote "Motion" for ruling for an FCC rule change to 47 C.F.R. § 1.724(f) was

produced 31 days from the December 16, 2014 letter from the FCC stating the procedures in this case. AT&T had 31 days to file a proper Motion for rule changes before the due date of the required § 1.724 Answer that included documentation per rules § 1.724(f).

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<sup>62</sup> See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

<sup>63</sup> 47 C.F.R. §§ 1.727 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularity the grounds and authority therefor, and setting forth the relief or order sought.

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of Sec. 1.720(c), except for those facts of which official notice may be taken. {1.720 (c) Facts must be supported by relevant documentation or affidavit.}

<sup>64</sup> Federal Rules of Procedure Title III Rule 10 Forms of Pleadings

(a) Caption; Names of Parties. Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

19. This AT&T alleged footnote "Motion" failed to provide the 47 C.F.R. § 1.727(a), 1727(b) which includes 47 C.F.R. § 1.720 (c) Facts must be supported by relevant documentation or affidavit requirements for a motion in a FCC complaint procedure.
20. This AT&T alleged footnote "Motion" was produced 31 days after the FCC produced rules for this case which required " The answer and reply still must include comprehensive factual support and a thorough legal analysis"<sup>65</sup>. AT&T had ample time to follow the FCC rules and Federal Rules of Procedures to file a proper and legal "Motion for FCC Rules Changes"<sup>66</sup> before the Answer due date January 16, 2015.
21. If AT&T could find any legal basis under 47 C.F.R. § 1.727<sup>67</sup> this footnote "Motion" to be legally acceptable, then it must contain findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading.
22. Alleged fact #1 in AT&T footnote "Motion", "Mr. Chelmowski to verbally abuse AT&T's employees". No documentation exist in AT&T answer for this alleged outrageous claim<sup>68</sup>. AT&T controlled all documentation including phone logs, correspondence, emails, etc and could not prove this in the AAA arbitration, in fact AT&T agreed with the arbitrator decision these AT&T allegations were false.<sup>69</sup> AT&T knows these statement is false because in the US court where AT&T is attempting to confirm AAA arbitration ruling that AT&T has no proof of this statement is true, however still continues this character assassination. Even if

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<sup>65</sup> December 16, 2014 FCC letter to AT&T with stating procedure matters " The answer and reply still must include comprehensive factual support and a thorough legal analysis"; 47 C.F.R. §§ 1.720-1.737

<sup>66</sup> id.

<sup>67</sup> id.

<sup>68</sup> Affidavit from James Chelmowski dated January 26, 2015

<sup>69</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

this false allegation was true, no legal basis for a customer to lose his rights under the FCC rules, regulations and laws<sup>70</sup> for a customer being abusive to an employee.

23. Alleged fact #2 in AT&T footnote "Motion", " barrage its executives with emails. No documentation exist in AT&T answer for this alleged outrageous claim<sup>71</sup>. As in #1 AT&T controlled all documentation including phone logs, correspondence, emails, etc and could not prove this in the AAA arbitration, in fact AT&T agreed with the arbitrator's decision that these AT&T allegations were false.<sup>72</sup> AT&T knows these statements are false because in the US court system AT&T is attempting to confirm AAA arbitration ruling that AT&T has no proof of this statement is true, however still continues this character assassination. Even if this false allegation was true, no legal basis for a customer to lose his rights under the FCC rules, regulations and laws<sup>73</sup> for emailing an employee of a company.
24. Alleged fact #3 in AT&T footnote "Motion", " impose the costs of serial litigation over the loss of a phone number that was seldom if ever used". No documentation exist in AT&T answer for this alleged outrageous claim<sup>74</sup>. No legal basis for a customer to lose his rights under the FCC for a customer exercising his required due diligence under fraudulent concealment doctrine on attempt to find AT&T continue the fraud, deceit and concealment of the facts of the basis of this claim<sup>75</sup> and the FCC do not specified required minimum usage of

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<sup>70</sup> 47 C.F.R. §§ 1.720-1.737; December 16, 2014 FCC letter to AT&T with stating procedure matters " The answer and reply still must include comprehensive factual support and a thorough legal analysis"

<sup>71</sup> Affidavit from James Chelmowski dated January 26, 2015

<sup>72</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

<sup>73</sup> 47 C.F.R. §§ 1.720-1.737; 47 C.F.R. §§ 1.717; 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36, etc.

<sup>74</sup> Affidavit from James Chelmowski dated January 26, 2015

<sup>75</sup> See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

phone number or in this case a "Vanity" phone number for rights under the FCC<sup>76</sup>. AT&T absolutely no concern for a 17 year customer right to possess his vanity number and his cost to try to possess his vanity number which he provided AT&T a complete and accurate porting request in March of 2011. AT&T only concern is not to produce the required documents<sup>77</sup> of the March and April 2011 AT&T porting rejections no matter what the unbelievable costs are to a former 17 year customer of AT&T for his US Constitutional & FCC rights. Not once since then did AT&T offer to give him his vanity number or make him whole<sup>78</sup>. Even if this false allegation was true, no legal basis for a customer to lose his rights under the FCC rules, regulations and laws<sup>79</sup> for due diligence for the fraudulent concealment doctrine on an attempt to find AT&T continue the fraud, deceit and concealment of the facts of the basis of this claim<sup>80</sup>.

25. Alleged fact #4 in AT&T footnote "Motion", "where, as here, both parties already have had a full opportunity to take discovery regarding the claims alleged ". No documentation exist in AT&T answer for this alleged outrageous claim<sup>81</sup>. AT&T was required to produce all these items asked in this Motion per order of the AAA arbitrator on December 4, 2013. On January 15, 2014, AT&T concealed all these items as AT&T attorney client privilege documents again in another fraud, deceit and concealment of the facts of the basis of this claim<sup>82</sup>. Another AT&T fraud, deceit and concealment of the facts of the basis of this

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<sup>76</sup> 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36

<sup>77</sup> 47 C.F.R. §§ 1.720-1.737; 47 C.F.R. §§ 1.717; 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36, etc.

<sup>78</sup> Exhibit E

<sup>79</sup> 47 C.F.R. §§ 1.720-1.737; 47 C.F.R. §§ 1.717; 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36, etc.

<sup>80</sup> See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

<sup>81</sup> Affidavit from James Chelmowski dated January 26, 2015

<sup>82</sup> See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

claim<sup>83</sup> <sup>84</sup> on March 5, 2014 AT&T refused to authorize FCC appointed neutral third party administrator of the NPAC<sup>85</sup> and phone number porting Neustar<sup>86</sup> to release any documents on the 2011 AT&T porting rejections or the 2010 alleged open porting order by XO facts AT&T claims in this case.

26. AT&T is attempting to further conceal these documents in this footnote "Motion" as AT&T did in 2014 by forbidding Neustar of providing any details of the March and April 2011 AT&T porting rejections and 2010 cancelation for 847-768-0000 and 847-768-0400 Neustar<sup>87</sup> in wrote :

Neustar is in receipt of the above-referenced subpoena concerning the porting activity of several telephone numbers. As the administrator of the regional United States Number Portability Administration Centers (NPACs), Neustar confirmed that it is in possession of carrier data responsive to the subpoena. As the administrator of the NPACs, Neustar is required to maintain the confidentiality of carrier data contained in the NPACs, such that it may not disclose such data to a third party without first obtaining the carrier's written consent to do so. Neustar has received authority from AT&T to disclose the following data about the telephone number there indicated:

- 847-768-0400 - July 18, 2011 -ported from Cingular Wireless (AT&T) to the code-assignee Ameritech(AT&T)

27. AT&T using a false and fraudulent veil of AT&T attorney client privilege failed to produce any porting documents, AT&T FCC NOIC informal complaint case files and easy producible emails with AT&T SEG<sup>88</sup> on January 15, 2014 AAA arbitration discovery.

28. AT&T January 16, 2015 answers statements refer to these discovery documents however AT&T failed to produce these discovery items required 47 C.F.R. § 1.724 because it would

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<sup>83</sup> *id.*

<sup>84</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

<sup>85</sup> Exhibit B-0002

<sup>86</sup> The FCC determined that the NPAC should be administered by one or more neutral third parties. Neustar has been deemed a neutral third-party administrator with strict neutrality requirements in place for all employees, board members and contractors. Neustar's corporate-wide neutrality program is unmatched by any other entity in the market today. <https://www.npac.com/number-portability/the-npac-neustar-lnp>

<sup>87</sup> *id.*

<sup>88</sup> Exhibit C-0002 to 5

expose AT&T fraudulent concealment scheme.<sup>89</sup> Instead created an illusion of deception of alleged "full cooperation of AAA arbitration discovery"<sup>90</sup> along with false personal character assassination on Mr. Chelmowski and this strange footnote "Motion" to conceal the facts of the real reasons for AT&T 2011 March and April porting rejections of a complete and accurate porting request. For the record, during these March and April porting requests Mr. Chelmowski's account was current with no past due balance which is not required 47 C.F.R. § 42.35 and 42.36 only an active phone number. AT&T repeatedly tries to assassinating Mr. Chelmowski character on paying his bills on time<sup>91</sup> to deflect and deceive others to avoid producing the facts on AT&T 2011 March and April porting rejections<sup>92</sup> and AT&T consistent fraud, deceit and concealment of the facts of the basis of this claim.<sup>93</sup> This practice is exhibited in AT&T January 16, 2015 Answer and AT&T footnote "Motion". AT&T constant false character assassination, blaming everyone else for AT&T actions. AT&T total disregard of FCC rules and state AT&T needs not provide a single document of evidence to support anything.

**AT&T possession of documents Required should have been provided on January 16, 2015  
FCC Answer 47 CFR § 1.724(f) & (g), Truthful and Accurate Statements to the  
Commission 47 CFR § 1.17 and FCC December 16, 2014 ruling in this case.**

29. Produce requirements under 47 C.F.R. § 1.724 including but not limited to the following

1.724 (f) & (g) and the following:

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<sup>89</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

<sup>90</sup> *id.*

<sup>91</sup> Exhibit A-0011 Bill current due April 5, 2011; Exhibit B-0012; Exhibit B-0018-20; AT&T Answer

<sup>92</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

<sup>93</sup> See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

1) LNP Porting documents with 76 references in AT&T answer statements<sup>94</sup> (required for FCC violations 6 counts 47 C.F.R. § 42.35, 6 counts 47 C.F.R. §42.36 and the fraudulent concealment):

Produce any and all documents internal and external, emails, working papers, logs, submitted to others, filings for the porting of 847-768-0000 started on or about 12/10/2009 and 847-768-0400 started on or about 12/10/2009 plus 2011 porting started on or about 3/18/2011 porting of all 4 numbers 847- 768-0400, 847-768-0000, 847-744-5626 and 847-917-2384 through 12/31/11. This should include all communication to and from other companies or carriers, including but not limited to FCC, Neustar, North American Numbering Council (NANC), Number Portability Administration Center Service Management System (NPAC), other government agencies and other companies regarding porting of all these numbers. Names of AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

2) FCC formal Complaint 11-C00292341 - Response author Margaret Trammel - No AT&T case file with 52 references in AT&T answer statements<sup>95</sup> (required for FCC violations 47 C.F.R. § 1.717 and the fraudulent concealment):

Produce any and all documents from AT&T internal investigation regarding the inability to port service for Claimant, the FCC Informal Complaint 11-C00292341 from March 24, 2011 date filing of the FCC informal complaint to the present include all documents, work papers, internal and external correspondence, emails, and proof delivery of the required copy to James Chelmowski. Including the AT&T internal case number and AT&T full internal case file. Names of AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

3) FCC formal Complaint 11-C00325771 - No Response author - AT&T case CM20110831\_26702265 with 55 references in AT&T answer statements<sup>96</sup> (required for FCC violations 47 C.F.R. § 1.717 and the fraudulent concealment):

Produce any and all documents from AT&T internal investigation regarding the inability to port service for Claimant, the FCC Informal Complaint 11-C00292341 from date filing of the FCC informal complaint to the present include all documents, work papers, internal and external correspondence, emails, and proof delivery of the required copy to James Chelmowski. Including provide the AT&T author of this letter and AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

4) Correspondence and emails with 62 references in AT&T answer statements<sup>97</sup> - (required for all FCC 14 violations and the fraudulent concealment)

Produce any and all documents internal and external and all emails with regards to Jim Chelmowski or James Chelmowski (Claimant) or any of his phone numbers from

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<sup>94</sup> *id.*

<sup>95</sup> *id.*

<sup>96</sup> *id.*

<sup>97</sup> *id.*



12/01/2009 to the present. AT&T SEG takes only seconds or minutes for production of all these documents<sup>98</sup>. Include all certification from AT&T SEG, amdocs, intelligence, etc. of completeness, etc.

30. These documents should have been produced to support AT&T January 16, 2015 FCC answer statements and should be required under the FCC Answer 1.724 rules however again AT&T decided to conceal these documents . Exhibit group D illustrate which statements in AT&T 1/16/15 Answer refer to each of these 4 items to compel that should have been produced in that Answer.
31. AT&T January 16, 2015 Answer continue concealment and deceit<sup>99</sup>, implied these documents were already produced, however, Chelmowski's January 26, 2015 reply disclosed AT&T discovery production from the AAA arbitration in Reply Exhibit Ex-0278 to Ex-0519 and the AAA arbitrator approved items subject to only AT&T attorney client privilege<sup>100</sup>. AT&T stripped out all porting documents, carefully white out and redacted conversation logs so AT&T could try to manipulate evidence for defamation and false character assassination of Mr. Chelmowski to take the focus of AT&T breach of contract, conversion, intentional infliction of emotional distress, etc.<sup>101</sup>. AT&T knew much of the documents AT&T controlled and without court mandated Federal Rules of Procedures in discovery AT&T could manipulate document production and conceal AT&T true motive. AT&T control of

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<sup>98</sup> Exhibit C-0002 to 5

<sup>99</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

<sup>100</sup> *id.*

<sup>101</sup> Spoilage of evidence including almost surgically redacting AT&T logs Exhibit Group C, stripping emails so AT&T could testify with no regards to the truth in Exhibit Group A potential perjury; Exhibit Group B AT&T documents full contradictions because they are full of concealment and lies; Exhibit Group D - AT&T executive involvement 99% of the emails were concealed on select few including emails where the whole body was erased to change the appearance of the email. AT&T executives in 2011 were busy trying to get the FCC approval on the \$39 Billion T-Mobile merger and probably did not want the FCC to be aware of these FCC violations at the expense of Mr. Chelmowski. AT&T executive opening emails from February and March of 2011 were opened days before the second informal complaint was filed (not by Mr. Chelmowski), during AT&T informal investigations and during some key dates in the merger process. Why would AT&T open emails months and years later? The only way to get the facts is requiring AT&T to follow FCC 1.724 and 1.17 and produce these concealed documents.



incriminating document, witness and suppression of Neustar porting data subpoena made the AT&T mandated arbitration process nearly impossible for AT&T lose no matter what AT&T did to their customers.

32. AT&T actions illustrate the total disregard of their customers rights, that AT&T would even provide false, deceptive and concealed responses to the FCC<sup>102</sup>. AT&T knows perjury<sup>103</sup> in an arbitration is nearly impossible to prosecute. AT&T references AT&T "full discovery" in AT&T January 16, 2015 for some reason very selective produced documents in the January 16, 2015 answer and failed to produce these documents clearly referenced in this Answer<sup>104</sup>. Maybe AT&T is still trying to deceive the FCC that AT&T already produced documents to support the 2011 porting rejections, informal complaint responses, etc. mentioned in AT&T Answer and all the Complaint initial interrogatories.<sup>105</sup>
33. Why would AT&T not agree to reschedule a United States Federal District Court hearing (Vacate or Confirm the Arbitration Award) a few weeks later when Mr. Chelmowski would have doctor's clearance instead trying to force Mr. Chelmowski to disobey his doctor's orders<sup>106</sup> and risk further injury to his recent surgically repaired leg? AT&T refusing the decency of re-scheduling this hearing<sup>107</sup> without allowing Mr. Chelmowski appear at the hearing defend his right to amend his complaint as matter of course Federal Rules of Civil Procedure 15 (a) (1) (B). Now this case is the US Circuit Court of Appeals. It appears AT&T without allowing Mr. Chelmowski's right to testify at the hearing wanted this case

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<sup>102</sup> Concealment of required factual support 47 CFR § 1.724 Answer; 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

<sup>103</sup> Perjury Exhibit Group A

<sup>104</sup> Concealment of required factual support 47 CFR § 1.724 Answer - Exhibit Group D

<sup>105</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

<sup>106</sup> Doctor's post operation order of being homebound Exhibit E-0006

<sup>107</sup> AT&T refusal to re-schedule hearing because Mr. Chelmowski Dr. Order Exhibit E-0007 to 8

decided to help with AT&T fraudulent concealment scheme<sup>108</sup> avoid providing required factual support in an effort to conceal the FCC violations.<sup>109</sup> The case has no bearing on the FCC jurisdiction of this FCC formal case.

34. AT&T disregard of customer's rights included AT&T attempts to conceal these documentation to support AT&T answer

35. Starting list of AT&T employees with firsthand knowledge using AT&T produced logs and emails opened by AT&T employees are in Exhibit F and summarized on Exhibit F-0001.

### **Summary**

36. AT&T presented no legal argument for an exception to 47 C.F.R. § 1.727 Motion for AT&T footnote "Motion" not to conform to FCC rules and FRCP for a legal and valid motion.

37. Even if AT&T footnote "Motion" would be considered a legal motion by the FCC it failed to produce the requirements of factual and legal support requirement.

38. AT&T provided no legal argument that false accusations of customer's behavior or emails to AT&T employees would allow the 47 C.F.R. § 1.724 Answer requirements.<sup>110</sup>

39. AT&T outrageous allegation that neutral third party Neuter, OOMA and XO sworn statements are false and fraud without producing a single document.<sup>111</sup> FCC should require AT&T follow the FCC rules and not make false allegations without the required factual proof.<sup>112</sup>

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<sup>108</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

<sup>109</sup> *id.*

<sup>110</sup> December 16, 2014 FCC letter to AT&T with stating procedure matters " The answer and reply still must include comprehensive factual support and a thorough legal analysis"; 47 C.F.R. §§ 1.720-1.737

<sup>111</sup> AT&T January 16, 2015 Answer

<sup>112</sup> *id.*

40. AT&T April 11, 2011 NOIC communications with the FCC concealed all AT&T March and April 2011 porting rejections with fraud, deceit and concealment of the facts<sup>113</sup> of the basis of this claim<sup>114</sup>. The completely deceptive letter blamed Mr. Chelmowski for not calling back AT&T for the failure to port AT&T. 47 C.F.R. § 52.35 and § 52.36 requires a telecom company may not reject complete and accurate porting request does not require a customer calling back the telecom company in the regulations.<sup>115</sup> The AT&T investigation for this 4/11/11 NOIC lasted only hours because AT&T just received the complaint on 4/11/11 per the FCC. AT&T never sent this letter to Mr. Chelmowski as required by 47 C.F.R. § 1.717.
41. AT&T September 22, 2011 NOIC communications with the FCC concealed all AT&T March and April 2011 porting rejections with fraud, deceit and concealment of the facts are the basis of this claim<sup>116</sup>. The deceptive letter blamed Mr. Chelmowski for: 1) Deceptive (not relative) statement not calling back AT&T for the failure to port- 47 C.F.R. § 52.35 and § 52.36 requires a telecom company may not reject complete and accurate porting request does not require a customer calling back the telecom company 2) Deceptive (not relative) statement 2010 wrong account number unrelated porting request AT&T had a valid reason to reject and 3) Deceptive (not relative) statement Mr. Chelmowski account was inactive in September 2011 therefore in September of 2011 AT&T had a valid reason to reject the porting however during the March and April of 2011 Mr. Chelmowski's account was active. This fact and the facts of the 2011 AT&T porting rejections were concealed with fraud,

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<sup>113</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

<sup>114</sup> See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

<sup>115</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; “[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent.” *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

<sup>116</sup> See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

deceit and concealment of the facts of the basis of this claim<sup>117</sup>. AT&T logs show that AT&T directors were involved with this investigation that lasted 23 days vs. 4/11/11 investigation which lasted only hours. AT&T 9/22/11 NOIC contained over 30 log entries and the 4/11/11 investigation contained NO log entries. AT&T never sent this letter to Mr. Chelmowski as required by 47 C.F.R. § 1.717.

42. Mr. Chelmowski never filed this complaint<sup>118</sup> in August of 2011 however carefully reading the 4/11/11, AT&T promised the FCC after closing AT&T investigation in minutes or hours while AT&T is act of multiple porting rejections (completely concealed in the NOIC letter). AT&T stated AT&T would reopen their FCC investigation once Mr. Chelmowski called back AT&T. Per AT&T records Mr. Chelmowski called back AT&T on April 11, April 18 and April 21 of 2011<sup>119</sup>. It appears AT&T decided to re-open the FCC in August of 2011 per AT&T 4/11/11 NOIC letter by forgery of Chelmowski identity to create a new informal complaint. AT&T tried to hide the existence of the 4/11/11 NOIC complaint this complaint has no AT&T internal case number or any AT&T logs. The 4/11/11 NOIC complaint did not disclose the ongoing 2011 March and April AT&T porting rejections which was the only item in the complaint. The response was to blame Mr. Chelmowski even though he had a complete and accurate porting request on an active phone line to conceal all facts from the FCC so FCC would not further investigate. AT&T concealed this letter from Mr. Chelmowski to prevent him from becoming aware of the facts which are the basis of his FCC claims<sup>120</sup>.

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<sup>117</sup> *id.*

<sup>118</sup> Affidavit from James Chelmowski dated January 26, 2015

<sup>119</sup> Chelmowski's Complaint and Reply

<sup>120</sup> See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

43. AT&T practice of concealing the facts to prevent him from becoming aware of the facts which are the basis of his FCC claims<sup>121</sup> continued in 2013 and 2014. Until after Neustar exposed and disclosed on March 5, 2014 that these 2011 March and April porting rejections exist and AT&T refuses to authorize Neustar to disclose any details on these 2011 March and April AT&T porting rejections.<sup>122</sup>
44. AT&T answer could not even address the individual porting rejections dates as required under FCC Answer. All relevant AT&T Answer statements were proven false through AT&T documents and neutral third party sworn subpoena response in January 26, 2015 Reply requirements in paragraphs 56 through 86 with factual proof. AT&T answer did not provide a single document to support AT&T answers statements which was required.<sup>123</sup>
45. AT&T should not be allowed to make a mockery of the FCC complaint process for 1.717 informal complaints and 1.720 formal complaints by massive false character assassination and false statements and refusing to provide the required documentation for AT&T alleged facts.<sup>124</sup> United States citizens like Mr. Chelmowski are under the impression that FCC affiliates and licensee such as AT&T are required by law to adhere to the FCC laws, rules and regulations.<sup>125</sup> Citizens like Mr. Chelmowski have a constitutional rights.
46. It appears in AT&T Answer and many other AT&T correspondence that AT&T executives were very angered that Mr. Chelmowski received a refund of the hundreds of dollars overpayment to AT&T from 2007 in 2010.<sup>126</sup> For Mr. Chelmowski to obtain the refund after trying for over 2 years through AT&T customer support and AT&T Office of the President

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<sup>121</sup> *id.*

<sup>122</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

<sup>123</sup> *id.*

<sup>124</sup> *id.*

<sup>125</sup> *id.*

<sup>126</sup> Exhibit F-0046 to 47

required Mr. Chelmowski to email AT&T executives in 2010<sup>127</sup>. AT&T should not be allowed to hold his Vanity Number 847-768-0400 hostage out anger and revenge by violating Mr. Chelmowski rights under the FCC Act and United States Constitution. Then prevent him from becoming aware of the facts which are the basis of his FCC claims<sup>128</sup> and get away with these illegal action because apparently AT&T believes they are above the law and their customer does not have the financial strength to fight AT&T illegal actions.<sup>129</sup>

47. Apparently, AT&T believes AT&T does not need to follow FCC law<sup>130</sup> (besides AT&T owns terms and agreement with their customers, arbitration and court rules) and should be able to prevent customer from becoming aware of the facts which are the basis of his FCC claims<sup>131</sup> through AT&T actions which include perjury<sup>132</sup>, spoilage of evidence<sup>133</sup>, witness tampering<sup>134</sup>, obstruction of third party subpoenas<sup>135</sup>, etc. in AT&T mandated arbitration process. AT&T knows how to abuse an arbitration process because the very little if any involvement by the US court system.<sup>136</sup> By AT&T concealment of any potential incriminating document, witness and false character assassination of their customer to cover up AT&T illegal intentional actions.

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<sup>127</sup> *id.*

<sup>128</sup> See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

<sup>129</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; “[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent.” *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

<sup>130</sup> 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; “[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent.” *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

<sup>131</sup> See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

<sup>132</sup> Exhibit A - all pages

<sup>133</sup> Exhibit A-0052 to 55

<sup>134</sup> Exhibit C all pages

<sup>135</sup> Exhibit B-0002

<sup>136</sup> See AT&T filings in the US court system for the now active case currently moved the US Appellate court as of February 17, 2015.

48. This formal complaint case would not be here today before the FCC, if AT&T would have ported his complete and accurate request on March 24, 2011 as required by 47 C.F.R. § 52.35; 47 C.F.R. § 52.36 or AT&T would have been honest with the FCC and 47 C.F.R. § 1.717 on April 11, 2011 provided the FCC the fact that during March and April of 2011 AT&T rejected Mr. Chelmowski's porting accurate and complete request. AT&T should be accountable for their constant false character assassination, blaming everyone else for AT&T actions. Even statements that FCC appointed third party neutral company Neustar letter on March 5, 2014 was completely fraudulent along with XO and OOMA sworn subpoena responses. AT&T needs not provide a single document to support these outrageous allegations which by law and FCC<sup>137</sup> are required.
49. This formal complaint is relatively simple, Mr. Chelmowski multiple times in March and April of 2011 provided a complete and accurate porting request. AT&T rejected these response and has concealed to date AT&T details for March and April 2011 rejections from the FCC in 2011 informal complaints and refused to provide a single document to support AT&T false statements in this formal complaint. FCC 47 CFR § 52.35 & 52.36 requires AT&T provide Mr. Chelmowski his vanity phone in March and April of 2011, if fact anytime after those dates. Instead AT&T fraudulent conceals all documentation and relentless personal defamation and character assassination of Mr. Chelmowski<sup>138</sup> and blames everyone else for AT&T 2011 porting rejections in effort to conceal the actual facts. AT&T total disregards of Mr. Chelmowski rights, FCC rules including 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission, AT&T mandatory arbitration process, etc to

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<sup>137</sup> 47 C.F.R. §§ 1.720-1.737; 47 C.F.R. §§ 1.717; 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36, etc.

<sup>138</sup> Mr Chelmowski January 26, 2015 Affidavit 1

probably cover up the involvement of AT&T executives<sup>139</sup> in these massive FCC violations.

Which will be uncovered upon requirement of AT&T to follow FCC rules 47 CFR § 1.17 -

Truthful and Accurate Statements to the Commission and 47 C.F.R. § 1.720 to 1.726 formal complaint.

50. Mr. Chelmowski prays that AT&T should be required to follow the FCC rules 47 C.F.R. § 1.720 to 1.726 including but not limited to 47 C.F.R. § 1.724 Answers.

51. Mr. Chelmowski prays that FCC require AT&T to produce items which includes AT&T refers in 1.724 Answer statement which he discloses in the Proposed Order 47 C.F.R. § 1.727(b) Proposed Order required for a 1.727 FCC Motion and included in this motion.

52. Mr. Chelmowski prays that AT&T be required to follow the FCC rules 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission. For the “Federal Communications Commission”, which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter 47 U.S.C. § 151.

53. Point of clarification of the December 14, 2014 FCC ruling, AT&T has never offered to help Mr. Chelmowski get his vanity number or provide any assistance<sup>140</sup>. AT&T since March 2011 continue the fraud, deceit and concealment of the facts of the basis of this claim<sup>141</sup>, therefore Mr. Chelmowski never had a chance to retain his vanity number 847-768-0400 even in March and April 2011 with a complete and accurate porting request on an active phone line.

Respectfully Submitted,



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<sup>139</sup> Exhibit F all pages

<sup>140</sup> Exhibit E all pages

<sup>141</sup> See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)



James Chelmowski  
6650 N Northwest Hwy #300  
Chicago, IL 60631  
847-768-0000

March 3, 2015

## CERTIFICATE OF SERVICE

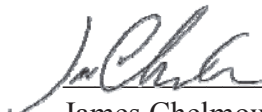
I HEREBY CERTIFY that on this 3rd day of March, 2015, a FCC Formal Motion to Compel FCC Rules Including but Not Limited to 47 CFR § 1.724 Answers and 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission against AT&T Mobility LLC, was electronic sent by email and the FCC's electronic filing system to the Defendant.

Michael Groggin  
AT&T  
1120 20th Street NW  
Washington, DC 20036  
202.457.2055  
michael.p.goggin@att.com

Counsel for AT&T Mobility LLC

March 3, 2015

Date

  
\_\_\_\_\_  
James Chelmowski  
Complainant

**Proposed Order for Motion to Compel FCC rules 47 C.F.R. § 1.724 Answer and 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission.**

AT&T is required to produce requirements under 47 C.F.R. § 1.724 Answer including but not limited to the following 1.724 (f)<sup>1</sup> & (g)<sup>2</sup> and the following:

1) Produce any and all documents internal and external, emails, working papers, logs, submitted to others, filings for the porting of 847-768-0000 started on or about 12/10/2009 and 847-768-0400 started on or about 12/10/2009 plus 2011 porting started on or about 3/18/2011 porting of all 4 numbers 847- 768-0400, 847-768-0000, 847-744-5626 and 847-917-2384 through 12/31/11. This should include all communication to and from other companies or carriers, including but not limited to FCC, Neustar, North American Numbering Council (NANC), Number Portability Administration Center Service Management System (NPAC), other government agencies and other companies regarding porting of all these numbers. Names of AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

2) Produce any and all documents from AT&T internal investigation regarding the inability to port service for Claimant, the FCC Informal Complaint 11-C00292341 from March 24, 2011 date filing of the FCC informal complaint to the present include all documents, work papers, internal and external correspondence, emails, and proof delivery of the required copy to James Chelmowski. Including the AT&T internal case number and AT&T full internal case file. Names of AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

3) Produce any and all documents from AT&T internal investigation regarding the inability to port service for Claimant, the FCC Informal Complaint 11-C00292341 from date filing of the FCC informal complaint to the present include all documents, work papers, internal and external correspondence, emails, and proof delivery of the required copy to James

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<sup>1</sup> Sec. 1.724 Answers. (f) The answer shall include an information designation containing:

(1) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the answer, along with a description of the facts within any such individual's knowledge;  
(2) A description of all documents, data compilations and tangible things in the defendant's possession, custody, or control, that are relevant to the facts alleged with particularity in the answer. Such description shall include for each document:

(i) The date it was prepared, mailed, transmitted, or otherwise disseminated;  
(ii) The author, preparer, or other source;  
(iii) The recipient(s) or intended recipient(s);  
(iv) Its physical location; and  
(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the defendant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

<sup>2</sup> Sec. 1.724 Answers. (g) The answer shall attach copies of all affidavits, documents, data compilations and tangible things in the defendant's possession, custody, or control, upon which the defendant relies or intends to rely to support the facts alleged and legal arguments made in the answer.

Chelmowski. Including provide the AT&T author of this letter and AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

4) Produce any and all documents internal and external and all emails with regards to Jim Chelmowski or James Chelmowski (Claimant) or any of his phone numbers from 12/01/2009 to the present. AT&T SEG takes only seconds or minutes for production of all these documents. Include all certification from AT&T SEG, amdocs, intelligence, etc. of completeness, etc.

# EXHIBIT C

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554


JAMES CHELMOWSKI v. AT&T

AFFIDAVIT from James Chelmowski

I did not initiate an FCC informal complaint on August 31, 2011. The only 2011 FCC informal complaint I initiated was on March 23, 2011.


This informal complaint must have been initiated by someone other than me.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

1/26/15   
Date James Chelmowski

STATE OF ILLINOIS  
COUNTY OF COOK

I, the undersigned Notary Public, do hereby affirm that James Chelmowski personally appeared before me on the 26 day of January 2015, and signed the above Affidavit as his free and voluntary act and deed.

  
Notary Public



# EXHIBIT D

# Which Federal Legal Entity is AT&T telling False Information the FCC or the US Federal District Court?

AT&T conceals to the FCC all porting in 2011 and claims no AT&T porting Rejections and now AT&T admits to the US Federal District Court 4 porting rejections occurred in 2011

LNP Porting Documents 847-768-0400

Ex-0021

Ex-0021

LNP Porting Documents 847-768-0400

Bates Stamped

Documents Produced by AT&T & 3rd Parties

Documents Produced 2011-2013

AT&T Attorney

Thomas Green

6/29/14

10/18/13

4/24/13

9/22/11

4/11/11

3rd Party

AT&T

Nuestar

AT&T Logs

OOMA/XO

US Court

AT&T \*

Produced

Documents

9/25/14

3/18/14

1/14/14

Yes

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The date AT&T has NOT produced a single porting document requested in 11/18/13 attorney approved discovery. This to aide the concealment scheme.

## FACTS on AT&T Intentional Concealment Scheme

2011 Porting Rejections after concealment on 4/11/11, 9/22/11, 4/24/13, 10/18/13, 1/14/14 and 3/18/14 - ALL IN WRITING by AT&T  
Then on May 29, 2014, June 27, 2014 and September 25, 2014 now admit there was porting rejections by AT&T

\* AT&T owns the actual porting data, AT&T must approve any data released by Neustar see Neustar 3/18/14 letter.

AT&T refused to let Neustar release any information for the time frame in question only the on porting on 7/18/11. To add confusion in the Arbitration Hearing

AT&T did not need XO Communications to cancel the 2010 porting request when AT&T Mobility porting the number to AT&T on 7/18/11  
What happened to the AT&T alleged Open Order from 2010? AT&T has the documents but will not produce these documents.



# EXHIBIT E

Creation Date	TYPE	Category	Subscriber	Created By
02/04/2010 16:43:31	CM - Interaction	CRM	-	30145 - CLARIFY CRM
System Text:		User Text:		
CM - Interaction		:CLARIFY:: INTERACTION ACTION: CASE; ID: CM20100204_8620788 NEED: DEVICE/WLNP INQUIRY OR PROBLEM/WLNP ISSUE NOTES: CREATED ON: 2010-02-04 17:42:25.0 CREATED BY: TB1352 (BURSE, TENE) CALLER: JIM CHELMOWSKI; OWNER: 847 744-5626; VERIFIED WITH ACCOUNT OWNER SSN; THE WORKING USER ID IS :TB1352		
02/04/2010 16:43:20	CM - Case	CRM	-	30145 - CLARIFY CRM
System Text:		User Text:		
CM - Case		:CLARIFY:: CASE CASE ID: CM20100204_8620788 CREATED ON: 2010-02-04 17:42:15.0 CREATED BY: TB1352 (BURSE, TENE) CALLER: JIM CHELMOWSKI TYPE: OOP/NON-REGULATORY/AT&T WIRELESS SUBSCRIBER PRIORITY: NORMAL STATUS: SOLVING SLA: 2010-02-16 17:42:15 . THE WORKING USER ID IS :TB1352		
02/04/2010 16:39:55	Upg Elg Check Result	SUB	847-744-5626	30145 - CLARIFY CRM
System Text:		User Text:		
Equipment Upgrade Eligibility Check. Last Upg Date: 01/13/2009. Last Early Upg Date: None. USC: AAA.		Standard Upgrade: Result: Not eligible. Reason: Past Due, Recent Upgrade/Activation - PT. Future Elg Date: 06/14/2010. iPhone 3G Standard Upgrade: Result: Not eligible. Reason: Past Due, Recent Upgrade/Activation - PT. Future Elg Date: 06/14/2010.		
02/04/2010 16:36:38	Office of the Pres	COLL	847-744-5626	25775 - TENE BURSE
System Text:		User Text:		
OOP Escalation		OOP: I left a message for Mr. Chelmowski to contact the OOP regarding the previous notes. OOP has declined to offer compensation. The port was incomplete due to the information provided from the other service provider being incomplete. Port request is only held for 14 days. So new port request is required if Mr. Chelmowski would still like to port his numbers. Tene Burse/loop		
02/04/2010 16:32:47	Office of the Pres	COLL	847-744-5626	25775 - TENE BURSE
System Text:		User Text:		
OOP Escalation		OOP: I received a call from Mr. Chelmowski upset that his numbers did not port and now its too late. So Mr. Chelmowski is requesting compensation from AT&T for equipment he purchased from the other service provider. I spoke with pac and found that the port request failed due to incomplete information per OSP. Tene Burse/loop		
02/04/2010 16:31:47	CM - Interaction	CRM	-	30145 - CLARIFY CRM
System Text:		User Text:		
CM - Interaction		:CLARIFY:: INTERACTION ACTION: ONE AND DONE NEED: WLNP - PORT OUT/OTHER CARRIER/CHECK PORT STATUS RESOLUTION: ADVISED NSP WITH NEEDED INFO NOTES: CREATED ON: 2010-02-04 17:30:25.0 CREATED BY: CB099Y (BLAIR, CARLIN) CALLER: JIM CHELMOWSKI; OWNER: 847 768-0000; VERIFIED WITH ACCOUNT OWNER SSN; THE WORKING USER ID IS :CB099Y		
02/04/2010 16:13:42	Upg Elg Check Result	SUB	847-768-0000	30145 - CLARIFY CRM
System Text:		User Text:		
Equipment Upgrade Eligibility Check. Last Upg Date: 03/02/2008. Last Early Upg Date: None. USC: LLL.		Standard Upgrade: Result: Not eligible. Reason: Past Due - P. Future Elg Date: None. iPhone 3G Standard Upgrade: Result: Not eligible. Reason: Past Due - P. Future Elg Date: None.		



## AT&T LNP Port Out Procedures

### 3.0 LSR Overview

The following are the procedures associated with requesting an LNP Port Out from AT&T. These procedures will be used for requesting LNP Port Outs where TNs reside on AT&T's network as UNE-L, T1 or facilities based. When procedures differ between the AT&T Digital Link, AT&T Local Network Services and AT&T Consumer VoIP, the difference is clearly indicated; otherwise, they should be assumed to be the same for AT&T Digital Link, AT&T Local Network Services and AT&T Consumer VoIP. Requests for TN's residing on the Incumbent LEC (ILEC) network and being resold to AT&T under an UNE-P configuration will be rejected and should be directed to the ILEC.

To determine whether a port out request should be directed to AT&T Digital Link or AT&T Local Network Services / AT&T Consumer VoIP, the gaining LEC should check NPAC to verify the SPID of the current service provider for the telephone number[s] (TNs) to be ported. The AT&T Digital Link SPID is 7421; AT&T Local Network Services and AT&T Consumer VoIP SPID is 7125. If there is not an active record at NPAC, the gaining LEC should check the OCN in the LERG to determine whether AT&T Digital Link or AT&T Local Network Services / AT&T Consumer VoIP is the current service provider. Requests should be sent to the applicable contacts identified below.

[LSR Process](#)  
[LSR Order Transmittal](#)  
[LSR Center Hours of Operation](#)  
[LSR Order Status](#)  
[LSR Email/FAX Forms](#)  
[LSR Confirmation and FOC Response](#)  
[Port Order Interval](#)  
[Supplemental Order](#)  
[Cancellation Requests](#)  
[Porting DID Numbers](#)  
[3 Way Porting INLP](#)  
[Partial Port Outs](#)  
[Cutover Support \(10-Digit Trigger / Coordinated Hot Cut\)](#)  
[Expedites](#)  
[LERG](#)  
[Line Information Database and CARE](#)  
[Directory Assistance/ Directory Listings](#)  
[E911](#)  
[Limitations](#)  
[ADL \(SPID 7421\) Disconnect Desk](#)  
[Escalation Contacts](#)

### 3.1 LSR Process

The following outlines the LSR porting process.

**PLEASE NOTE:** For ADL (SPID 7421), if the customer is completely disconnecting AT&T ADL (Local, T1 and LD), in addition to sending an LSR, the ADL Disconnect Desk must be contacted. See section 3.21 for details.

**Note 2:** This process is also used to initiate a **Code Migration Out**, with the exception of steps 7 through 12. When submitting the LSR, please indicate, in the 'Remarks' section, "Code Migration Out".

Step	Responsibility	Activity
1.	New LSP	Completes LSR and sends it to AT&T's center. (Please see section 3.2.)
2.	AT&T	<b>Receives LSR and reviews for accuracy and completeness.</b> If error, GO TO STEP 3. If correct, GO TO STEP 5.
3.	AT&T	Rejects LSR request and provides reason for reject.
4.	New LSP	Corrects errors and re-submits LSR to AT&T. GO TO STEP 2
5.	AT&T	Will return a LSR confirmation with Due Date and order number within <b>24 hours (Local Network Services / Consumer VoIP)</b> and <b>48 hours (ADL)</b> .
6.	AT&T	Issues necessary internal orders to port away TNs.
7.	New LSP	Submits Pending Port Request Subscription
8.	AT&T	Will issue a Confirmation Request (optional)
9.	AT&T	Will initiate an Unconditional Ten Digit Trigger 24 hours prior to port date. If Coordinated Hot Cut is desired, GO TO STEP 13
10.	New LSP	Completes Port Request If port date will be missed a supplement or cancellation is expected. (Please see section 3.9 or 3.10.)
11.	AT&T	Removes translations, unlocks E911, sends care records.
12.	New LSP	Locks E911, sends care records

Orders requesting CHCs will follow the same process flow as non-CHC requests. However, the following steps should be followed starting on the day before the due date.

Step	Responsibility	Activity
13.	New LSP	Contact AT&T 24 hours prior to due date to confirm readiness.

14.	New LSP	Contact AT&T at negotiated time on due date to initiate order activity.
15.	AT&T	<p>Work with New LSP to complete order activity and help resolve any troubles.</p> <p><b>NOTE:</b> If New LSP does not contact AT&amp;T on due date and time, order activity will not be worked. AT&amp;T will:</p> <ul style="list-style-type: none"> <li>• Send jeopardy notification to New LSP</li> <li>• Place order on hold for 1 business day If New LSP does not respond to jeopardy notification,</li> <li>• AT&amp;T will cancel order and may apply appropriate ancillary charges.</li> </ul>

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### 3.2 LSR Order Transmittal

AT&T requires that the requesting LSP completes a Local Service Request (LSR) form and returns it to one of the AT&T Center as follows:

#### AT&T Digital Link (SPID 7421)

Online Submission ( <i>Preferred method</i> )	<a href="http://www.att.com/lnp/lsr.html">http://www.att.com/lnp/lsr.html</a>
Fax ( <i>form</i> )	(281) 664-9215

#### AT&T Local Network Services and AT&T Consumer VoIP (SPID 7125)

On-Line Submission ( <i>Required method</i> )	<a href="http://www.att.com/lnp/lsr.html">http://www.att.com/lnp/lsr.html</a>
For inquiries, please use the following email address:	<a href="mailto:lnpolsr@ems.att.com">mailto:lnpolsr@ems.att.com</a>

AT&T requires that the LSP obtain a Letter of Authorization (LOA) from the end-user prior to submitting an LSR (or other means as required by applicable laws and rules.)

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### 3.3 LSR Center Hours of Operation

The hours of operation for the AT&T Local Business LSRs:

#### AT&T Digital Link (SPID 7421)

Monday - Friday **8:00 AM ET to 10:00 PM ET**

Holiday Closings: New Years Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day (and the following Friday), and Christmas Day.

#### AT&T Local Network Services and AT&T Consumer VoIP (SPID 7125)

Monday - Friday **8:00 AM ET to 5:00 PM ET**

Holiday Closings: New Years Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day (and the following Friday), and Christmas Day.

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### 3.4 LSR Order Status

Questions should be directed during normal business hours to:

#### AT&T Digital Link (SPID 7421)

Customer Care	877-641-3409
---------------	--------------

#### AT&T Local Network Services and AT&T Consumer VoIP (SPID 7125)

LSRC Hotline (404) 486-8224

Note: AT&T employees do not have the authority to issue "verbal FOCs."

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### 3.5 LSR Email/FAX Forms

AT&T requires OBF Local Service Request LSOG version 6 for a Port Out request sent by a gaining LEC.

- LSR Form  
[http://www.att.com/lnp/downloads/local\\_service\\_form.pdf](http://www.att.com/lnp/downloads/local_service_form.pdf)
- End User Form  
[http://www.att.com/lnp/downloads/enduser\\_info\\_form.pdf](http://www.att.com/lnp/downloads/enduser_info_form.pdf)
- Number Portability Form  
[http://www.att.com/lnp/downloads/num\\_port\\_form.pdf](http://www.att.com/lnp/downloads/num_port_form.pdf)

LSRs must reflect the logo/name of the LEC submitting the port out request.

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### 3.6 LSR Confirmation and FOC Response

Upon receipt of a complete and accurate LSR, the regional office will issue a local service confirmation via fax. AT&T will return on the FOC response, a confirmation service order number (ORD), firm order commitment (FOC) date, or due date and associated AT&T contact, should a concurrence in NPAC be required in escalation cases. Cutover support is provided via this service order number and contact information provided by AT&T on the FOC.

#### LSR Processing Interval

The LSR Confirmation will be sent within **24 hours for Business Local Network Services and Consumer VoIP**, and **48 hours for ADL** of a receipt of the clean LSR. AT&T's response interval does not begin until a complete and correct LSR is received from the LEC. LSRs received by the centers after **3:00 PM** local time at the center will be counted as having been received on the following business day. If no contact has been received in the specified time frame, a follow up call to the appropriate center to inquire about the status of the service request should be made.

Note that this does not include intervals when 3rd party providers are involved.

#### Rejects

If the LSR is not complete or accurate, a reject will be sent back to the LEC. This form will contain an explanation of the discrepancy and will be sent within **24 hours for Business Local Network Services and Consumer VoIP**, and **48 for hours ADL** of a receipt of the LSR.

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Ex-0013

Exhibit E-0003

### 3.7 Port Order Interval

As noted previously, the interval does not begin until AT&T has received a clean service request from the LEC. If the service request is not received by 3:00 PM local time, the due date is moved out by one business day, if necessary.

Once the FOC is returned, AT&T's interval for processing port outs are:

AT&T Digital Link (SPID 7421):

- **5 business days** for any amount of TNs after FOC.
- ISDN intervals are on an individual case basis.

AT&T Local Network Services and AT&T Consumer VoIP (SPID 7125):

- **3 business days** for any amount of TNs after FOC.
- Projects intervals are on an individual case basis. (LSRs ranging more than 5000 lines and can include multiple location accounts totaling the same quantities.)

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### 3.8 Supplemental Order

The gaining LEC must issue a supplemental order to AT&T to identify any changes in due dates, as well as changes or corrections to information provided on the original port out LSR. A supplemental order can only be sent after the original LSR has been confirmed, with a LSRC.

Supplemental orders will be accepted by AT&T up until 4 hours before the confirmed due date and time. This will ensure that the supplement order is worked expeditiously.

Changes to the original request that add an activity or additional numbers may impact the confirmed due date.

**If a cutover is not complete by the confirmed due date and AT&T does not receive a supplemental order within 48 hours after the confirmed due date, the original port-out request will be canceled. The LSP will be notified of the cancellation.**

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### 3.9 Cancellation Requests

AT&T accepts cancellation of a Local Order via re-send of LSR, up until 4 hours before the confirmed due date/time.

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### 3.10 Porting DID Numbers

AT&T allows porting of DID blocks.

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### 3.11 3 Way Porting INLP

AT&T Local Network Services supports porting customers that have an existing arrangement with Local Network Services and an ILEC. In a 3 Way Porting situation all customer TNs, including the Local Network Services numbers associated with the ILEC's provision RCF (remote call forwarding), must be included on the LSR. Both FOC interval and overall interval will be negotiated as a project.

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### 3.12 Partial Port Outs

AT&T supports partial port outs where the end user elects to convert only a subset of their TNs to another service provider and retains some portion of TNs with AT&T. AT&T requests that the Full/Partial port indicator is populate in order to assist AT&T identify the port requests intent. LSRs requesting a disconnect of some of the end user's TNs are no longer acceptable. In other words, *AT&T will not disconnect unwanted TNs identified on a LSR port request*. The end user customer will need to contact AT&T directly (identified on their bill) in order to make arrangements for disconnecting any unwanted TNs.

If the customer's BTN is being ported out, AT&T Business Local Network Services and AT&T Consumer VoIP require that a new BTN for the remaining TNs must be specified on the LSR.

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### 3.13 Cutover Support (10-Digit Trigger / Coordinated Hot Cut)

AT&T Local Network Services, AT&T Consumer VoIP support Unconditional Ten Digit Trigger. Where technically feasible, AT&T will apply the ten-digit trigger to all TNs being ported out. The trigger is applied prior to the due date and removed after the due date.

When Triggers are not available, (due to switch/equipment limitations or customer preference), Coordinated Hot Cuts will be the only other option for performing port-outs.

AT&T Digital Link supports Coordinated Hot Cuts (CHC). This term describes a combined simultaneous effort between local service providers and customers to perform the completion of a local service request order. CHCs will be initiated by a phone call from the NSP to AT&T at the pre-arranged, agreed upon time for the port to occur. Should the NSP fail to call AT&T at the pre-arranged, agreed upon time, AT&T will issue notice to the NSP of a missed CHC, and keep the window open for 2 hours to complete the CHC. After 2 hours, the NSP will be required to submit a new LSR, and establish a new date and time for the CHC.

Translations for AT&T Digital Link (ADL) numbers are removed from the AT&T Switch the day after the port is complete (Due Date plus 1) by Noon EST.

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### 3.14 Expedites

AT&T will consider support of expedited port out interval on an individual case basis (via LSR with the expedite field populated) with particular focus on preventing emergency services (911, Police, Fire, Ambulance or Medical Facilities) from being out of service. However, this does not guarantee that shortened intervals can be met. If the New LSP is requesting an expedite, the LSP must call the appropriate center after sending the LSR via facsimile. This will enable AT&T to immediately start the ordering process. Once called, AT&T will assess the feasibility and respond with the appropriate due date.

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### 3.15 LERG

AT&T marks as portable those NXXs that are available for porting in our switches and in the LERG.

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### 3.16 Line Information Database and CARE

The gaining LEC is responsible for any LIDB or CARE updates that may be required in connection with the port out.

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### 3.17 Directory Assistance/ Directory Listings

AT&T does not require a Directory Services Request (DSR) for port outs. The gaining LEC is responsible for contacting and coordinating with the responsible carrier



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## AT&T Customer Service Record (CSR)

### 2.0 CSR Overview

AT&T will provide a Local Customer Service Record (CSR) for TN's associated to the following platform types, UNE-P, UNE-L, VoIP, T1 and Facility based. When an LSP requests a CSR for an AT&T local customer, the Requesting LSP must complete the Customer Service Information Request (CSIR) form. The form can be filled out and submitted online at <http://www.att.com/lnp/csir.html>. Alternately, the Requesting LSP can also send it via e-mail or fax to AT&T. AT&T will accept CSR requests from LSPs acting as an authorized agent for the customer. The LSP must have a Letter of Authorization (LOA) and retain it on file. AT&T will provide the Customer Service Record via e-mail or fax to the originator of the CSR request provided the mandatory fields on the CSIR form are complete. AT&T CSRs will be returned to the originator with the Line, Features and Directory Listing Information. *(For a sample of the CSIR form, see section 8.0 of this handbook).*

**Note:** After obtaining the CSR from AT&T and the requested TN's are identified as being provided under UNE-P, LSR requests should be sent to the Incumbent LEC.

[CSR Process](#)  
[CSR Order Transmittal](#)  
[CSR Center Hours of Operation](#)  
[CSIR Order Status](#)  
[CSIR Email/FAX Form](#)  
[Sample CSIR Form](#)  
[CSR Response](#)  
[Escalation Handling](#)

### 2.1 CSR Process

The following process outlines the necessary steps for the new LSP to obtain an AT&T CSR.

Step	Responsibility	Activity
1.	New LSP	New LSP completes the CSIR form
2.	New LSP	Submits online, E-Mails or Faxes the CSIR form to AT&T (see <a href="#">Section 2.2</a> - CSR Order Transmittal).
3.	AT&T	<b>Receives and logs CSIR request. Reviews CSIR for completeness and accuracy.</b> ????If error or incomplete, GO TO STEP 4. ????If accurate and complete, GO TO STEP 6.
4.	AT&T	Rejects CSIR via email to the Requesting LSP with the reason why the request was rejected.
5.	New	LSP Must make corrections and submit the CSIR again. GO TO STEP 3.
6.	AT&T	Gathers customer record information and provides the CSR.
7.	AT&T	Delivers the CSR to originator via e-mail, fax, US Mail and logs the completion.

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### 2.2 CSR Order Transmittal

The AT&T Business and AT&T Consumer VoIP Services CSR Center is the Single Point of Contact (SPOC) for all AT&T Local Business and AT&T Consumer VoIP Services CSR requests. Contact this center as follows:

To Request a CSR, send CSIR to:

On-Line Submission ( <i>preferred method</i> )	<a href="http://www.att.com/lnp/csir.html">http://www.att.com/lnp/csir.html</a>
E-Mail ( <i>form</i> )	<a href="mailto:RM-dallascsr03@ems.att.com">mailto: RM-dallascsr03@ems.att.com</a>
Fax ( <i>form</i> )	(281) 664-5360

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### 2.3 CSR Center Hours of Operation

The hours of operation for the AT&T Local Business and AT&T Consumer VoIP CSR Center are:

**Monday - Friday 8:00 AM ET to 6:00 PM ET**

Holiday Closings: New Years Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day (and the following Friday), and Christmas Day.

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### 2.4 CSIR Order Status

To Request the Status of a CSR:

- CSR Agents (404) 486-8226

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### 2.5 CSIR Email/FAX Form

AT&T requires the following Fax Form to be sent by the gaining LEC.

- [http://www.att.com/lnp/downloads/custservice\\_info\\_form.pdf](http://www.att.com/lnp/downloads/custservice_info_form.pdf)

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### 2.6 Sample CSIR Form

A sample CSIR form can be found on the following page

Ex-0015

Exhibit E-0005

- [http://www.att.com/lnp/downloads/sample\\_csir.pdf](http://www.att.com/lnp/downloads/sample_csir.pdf)

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## 2.7 CSR Response

The CSR Package returned to the requestor will contain the following information from AT&T:

- Line Information
- USOC Information (Features), as applicable
- Directory Listing Information, as applicable

### CSR Processing Interval

The interval for returning CSR information will be **3 business days**.

Note: The interval clock begins at the start of the next business day for CSR requests received after **3 PM (ET)**.

*Multiple or Complex CSRs may require Negotiations between the LSP and the AT&T Local Business Services CSR Center.*

### Rejects

CSR requests that cannot be processed will be rejected to the requestor of the CSR within 3 business days of AT&T receiving CSIR form. The Reject Reasons will be listed on the original CSIR form returned to the CSR requestor as follows:

Reject Reason	Reject Code
Account Tel. No. and/or Customer Location Not Found	001
Account Tel No. Not AT&T	002
Incomplete - Incorrect information provided	003
Requested LOA - No Response	004
Customer Supplied Account Information For requested Account Does Not Match Active Account	018
Account Exceeds maximum Page or fax Limit (20 Pages)	052
Duplicate	200
Requestor Cancelled	201
Required Requesting Company Contact Information Incomplete or LOA Box Not Checked	501

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## 2.8 Escalation Handling

The guidelines for escalations are:

- Requesting LSP did not receive the CSR (s) within standard interval.
- Allow 2-hour intervals for response at each level of escalation.

When it is necessary to escalate, the LSP should contact the AT&T Local Business / AT&T Consumer VoIP CSR Center and provide the following information:

- LSP Contact Name and Telephone Number
- BTN
- Customer Name
- Date CSIR was E-Mailed / Faxed to AT&T
- Description/Reason for escalation

Once contacted, the CSR Representative will investigate to determine the status of the original CSR request. AT&T will provide status within 2 - 3 business hours of receiving the initial escalation contact.

### Escalation Contacts

Escalations should be directed, during normal business hours, as follows:

First point of contact	CSR Agent	(404) 486-8226
Second point of contact	Rebecca Medlin	(404) 486-6052
Third point of contact	Khuram Javed	(404) 486-6836

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or directory assistance listing provider any DA/DL changes that may be required in connection with the port out.

AT&T will send a disconnect record to remove the record when the port request is identified as wireline to wireless.

The AT&T Digital Link (SPID 7421) and AT&T Local Network Services (SPID 7125) Business DA/DL "Hotline" for post-cutover account resolution is 877-295-6918.

The AT&T Consumer VoIP (SPID 7125) DA/DL "Hotline" for post-cutover account resolution is 866-596-8464.

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### 3.18 E911

AT&T has adopted E911 NENA standards and will be able to process Unlocks (U) and Migrates (M) through SCC.

AT&T will send an unlock record to the ALI database to remove the ported number once the order is posted as complete. It is expected that the Unlock will be sent on the order due date. The gaining LEC will send a Migrate to the E911 ALI database to update the ALI record.

AT&T will send a disconnect record to the ALI database to remove the record when the port request is identified as wireline to wireless.

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### 3.19 Limitations

AT&T does not support porting TNs outside the customer's rate center, per industry standards.

**Note, AT&T only supports porting 'working numbers.'**

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### 3.20 ADL (SPID 7421) Disconnect Desk

The ADL Disconnect Desk must be contacted if the customer is porting away all their numbers and want their AT&T T1 and AT&T Long Distance service disconnected.

Web Portal	<a href="https://smallbusiness.bellsouth.com/enterprise_disconnects.aspx">https://smallbusiness.bellsouth.com/enterprise_disconnects.aspx</a>
Business Direct	<a href="https://www.businessdirect.att.com/portal/index.jsp">https://www.businessdirect.att.com/portal/index.jsp</a>

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### 3.21 Escalation Contacts

The guidelines for handling escalations are:

- The order activity was not completed by the confirmed due date and time.
- The FOC was not received within the required timeframe.
- NPAC conflict message needs to be resolved.
- Allow 2-hour intervals for response at each level of escalation.

If an escalation is necessary, the LSP should call the appropriate center:

#### AT&T Digital Link (SPID 7421)

Escalations should be directed, during normal business hours, as follows:

First point of contact:	Customer Care	(877) 641-3409
Second point of contact:	Steve Driskell	(404) 486-6286
Third point of contact:	Rick Cook	(404) 486-1595
Fourth point of contact:	Jeff Crosby	(916) 830-5001

#### AT&T Local Network Services (SPID 7125)

For AT&T Local Network Services on LSR status or confirmation issues pre-FOC

First point of contact	Listed on the LSRC in 'REP' field	
	LSRC Hot Line	(404) 486-8224
Second point of contact	Emma Anderson	(404) 486-1850
Third point of contact	Rick Cook	(404) 486-1595
Fourth point of contact	Jeff Crosby	(916) 830-5001

For AT&T Local Network Services Provisioning on translation or concurrence issues post-FOC

First point of contact	LNP Tier 2 Support Hotline	(303) 294-6804
Second point of contact	Jill Gessner	(303) 294-6657
Third point of contact	Heather Noto	(303) 294-6730
Fourth point of contact	Jeff Crosby	(916) 830-5001

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# **SureWest - Kansas/Missouri Operations**

## **Local Number Portability (LNP) Position Paper**

### **Local Number Portability**

SureWest ports telephone numbers (TNs) in accordance with applicable Regulatory Rules and Industry Guidelines.

### **LSR Requirements (Wireline )**

**Simple Ports** – the FCC defines Simple Ports as, those ports that: (1) do not involve unbundled network elements; (2) involve an account only for a single line; (3) do not include complex switch translations (e.g., Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop); and (4) do not include a reseller. FCC 07-188 reference: Intermodal Number Portability FNPRM, 18 FCC Rcd at 23715, para. 45 n.112 (citing North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket No. 95-116 (filed Nov. 29, 2000)).

**Non-Simple Ports** - per the FCC, Non-Simple Ports include; a port that involves porting multiple telephone numbers, a single telephone number from a multi-number account, and/or an account that has complex switch services or features. Complex Ports and Projects are Non-Simple Ports.

*See, e.g., NORTH AMERICAN NUMBERING COUNCIL (GUIDE TO PORTING A TELEPHONE NUMBER) LNPA WG Report to NANC*

### **SureWest Porting Interface**

SureWest operates a Local Number Portability (LNP) web interface called the “SureWest Port Tool.” The SureWest Port Tool is the single method in which SureWest, as the Old Service Provider (OSP) accepts LNP orders (effective 02/28/2011) for the following SureWest Old Service Provider (OSP) companies:

#### **In Kansas**

SureWest Kansas Licenses, LLC (OCN 3915, SPID 3915)

#### **In Missouri**

SureWest Kansas Licenses, LLC (OCN 3991, SPID 3915)

Each carrier porting numbers from SureWest will need to appoint a SureWest Port Tool administrator, and have that administrator contact SureWest to establish authorized access to the SureWest Port Tool. Carriers’ administrators can then assign staff/users needing access to the SureWest Port Tool. The tool is simple to learn and easy to use, with the added feature of having online documentation and help.

For more information about the SureWest Port Tool and/or to establish your administrative carrier user name and login, please contact:

#### **Kansas/Missouri LNP**

Debbie R Morse

email: debbie.morse@surewest.com

(913) 322-9742

### **Porting Responses from SureWest**

Porting responses, including Firm Order Confirmation (FOC), Rejects, etc, are provided via electronic mail.

### **Basic LNP Requirements**

- \* The NSP must indicate they are in possession of a letter of authorization (LOA) from the end user customer.
- \* Port-Out Requests for Business accounts must contain a Valid Auth Contact Name.
- \* Telephone Numbers (TN) must be active to port. Inactive telephone numbers cannot be ported.
- \* All LSR requests should start with Version Number 0. Any SUPs (i.e., Supplements / revisions / modifications) will start with 1 and go up.
- \* All SUPs must have the proper code and changes to the LSR:
  - SUP 1 = Cancel LSR
  - SUP 2 = Desired Due Date (DDD) change
  - SUP 3 = Other modification as detailed (corrections, added TN, etc.)
  - SUP code is required on all supplemental LSRs (See codes above)
  - LNP Validation: ten-digit telephone number & five-digit zip code. (SureWest elects to treat the passcode and customer account number as “not applicable” at this time).

## SureWest Due Date Intervals for Simple Ports

Note: Based on Central Time Zone

Accurate/Complete LSR received	FOC Due back by date/time	Ready-to-Port Day/time
Mon 8:00am through 8:59am	Mon 12:00pm (noon) through 12:59pm	Tues 00:00:00
Mon 9:00am through 9:59am	Mon 1:00pm through 1:59pm	Tues 00:00:00
Mon 10:00am through 10:59am	Mon 2:00pm through 2:59pm	Tues 00:00:00
Mon 11:00am through 11:59am	Mon 3:00pm through 3:59pm	Tues 00:00:00
Mon 12:00pm (noon) through 12:59pm	Mon 4:00pm through 4:59pm	Tues 00:00:00
Mon 1:00pm	Mon 5:00pm	Tues 00:00:00
<b>Mon 1:01pm through Tues 7:59am</b>	<b>Tues 12:00pm (noon)</b>	<b>Weds 00:00:00</b>
Tues 8:00am through 8:59am	Tues 12:00pm (noon) through 12:59pm	Weds 00:00:00
Tues 9:00am through 9:59am	Tues 1:00pm through 1:59pm	Weds 00:00:00
Tues 10:00am through 10:59am	Tues 2:00pm through 2:59pm	Weds 00:00:00
Tues 11:00am through 11:59am	Tues 3:00pm through 3:59pm	Weds 00:00:00
Tues 12:00pm (noon) through 12:59pm	Tues 4:00pm through 4:59pm	Weds 00:00:00
Tues 1:00pm	Tues 5:00pm	Weds 00:00:00
<b>Tues 1:01pm through Weds 7:59am</b>	<b>Weds 12:00pm (noon)</b>	<b>Thurs 00:00:00</b>
Weds 8:00am through 8:59am	Weds 12:00pm (noon) through 12:59pm	Thurs 00:00:00
Weds 9:00am through 9:59am	Weds 1:00pm through 1:59pm	Thurs 00:00:00
Weds 10:00am through 10:59am	Weds 2:00pm through 2:59pm	Thurs 00:00:00
Weds 11:00am through 11:59am	Weds 3:00pm through 3:59pm	Thurs 00:00:00
Weds 12:00pm (noon) through 12:59pm	Weds 4:00pm through 4:59pm	Thurs 00:00:00
Weds 1:00pm	Weds 5:00pm	Thurs 00:00:00
<b>Weds 1:01pm through Thurs 7:59am</b>	<b>Thurs 12:00pm (noon)</b>	<b>Fri 00:00:00</b>
Thurs 8:00am through 8:59am	Thurs 12:00pm (noon) through 12:59pm	Fri 00:00:00
Thurs 9:00am through 9:59am	Thurs 1:00pm through 1:59pm	Fri 00:00:00
Thurs 10:00am through 10:59am	Thurs 2:00pm through 2:59pm	Fri 00:00:00
Thurs 11:00am through 11:59am	Thurs 3:00pm through 3:59pm	Fri 00:00:00
Thurs 12:00pm (noon) through 12:59pm	Thurs 4:00pm through 4:59pm	Fri 00:00:00
Thurs 1:00pm	Thurs 5:00pm	Fri 00:00:00
<b>Thurs 1:01pm through Fri 7:59am</b>	<b>Fri 12:00pm (noon)</b>	<b>Mon 00:00:00</b>
Fri 8:00am through 8:59am	Fri 12:00pm (noon) through 12:59pm	Mon 00:00:00
Fri 9:00am through 9:59am	Fri 1:00pm through 1:59pm	Mon 00:00:00
Fri 10:00am through 10:59am	Fri 2:00pm through 2:59pm	Mon 00:00:00
Fri 11:00am through 11:59am	Fri 3:00pm through 3:59pm	Mon 00:00:00
Fri 12:00pm (noon) through 12:59pm	Fri 4:00pm through 4:59pm	Mon 00:00:00
Fri 1:00pm	Fri 5:00pm	Mon 00:00:00
<b>Fri 1:01pm through Mon 7:59am</b>	<b>Mon 12:00pm (noon)</b>	<b>Tues 00:00:00</b>
<b>(go back to top of chart)</b>		

## **Due Date Changes**

LNP requests will automatically process on the Desired Due Date (DDD) provided to the NSP via the FOC. The NSP (Carrier) will have until 3:00 pm, Central Time Zone, on the Due Date provided via the FOC to reschedule or cancel a port request, otherwise, the TN in question will lose dial tone by the OSP. If cancellation is required after 3:00 pm, CT, on the FOC DDD, the NSP is advised to call 913-322-9908 to notify a live SureWest representative. The NSP is then advised to immediately submit a change request via the SureWest Prot Tool to help ensure the customer of the TN in question does not lose dial tone.

## **Response Intervals**

### **Wireline Response Intervals:**

**Simple Ports** – Requests meeting FCC criteria for Simple Porting will be responded to by SureWest via FOC or Rejection notice within four (4) hours (see chart above).

If the New Service Provider (NSP) requested due date is one to two (1 to 2) business days after LSR receipt, the FOC or Reject (whichever is applicable) is due within four (4) hours, provided the LSR is received by the OSP by the 1pm business day cutoff time (local time in the predominant time zone of the NPAC Region where the number is ported).

**Non-Simple Ports**, also known as, **Complex Ports**, contain up to 50 TNs i.e., those porting request that fall outside of “Simple Ports,” Complex Ports will be responded to (FOC or Reject) within one (1) business day (24 hours) from date/time of receipt of the LSR. SureWest’s standard for Desired Due Date (DDD) of Complex Ports is four (4) plus business days out from when SureWest (the OSP) receives the NSP’s LSR.

**Project Port** – Port out requests for more than 50 TNs constitute a project and the interval will be negotiated on an Individual Case Basis (ICB). Contact the SureWest Porting Administration Group (PAG) for ICB arrangements.

- \* SureWest expects reciprocal response intervals from Carrier.

## **Status/escalation Process**

In order to better serve porting requests, we ask the following be observed prior to contacting the Porting Administration Group (PAG):

### **Wireline Ports**

- \* Please allow four (4) hours prior to contacting SureWest for the status of a Wireline Simple Port, and 24 hours for Non-Simple Port requests. This will allow the port to be processed and either the FOC or Reject to be sent.
- \* For items that exceed this timeframe please use the following contact points:
  - Email requests for port status to [ev\\_everestreverseports@surewest.com](mailto:ev_everestreverseports@surewest.com) and allow four hours for response for Simple Ports and 24 hours for Non-Simple Ports. Emails received after 3:00 pm Central Time will be answered within the first two hours of the next business day.
  - If extenuating issues need to be addressed, contact the PAG at:
    - SureWest PAG Number: 913-322-9908
  - Escalation past the above should be directed to:
    - Debbie Morse – Supervisor 913-322-9742
    - After hours – Advance Technical Support 913-825-3000

## **LNP Rejection/Delay Restrictions**

The Federal Communications Commission (FCC) restricts carriers from imposing restrictions on the porting-out process beyond the necessary customer validation requirements. Consumers wishing to change service providers may request service from a new carrier at any time regardless of their standing with their old provider. **FCC rules require carriers to port a number when the OSP receives a valid request and carriers may not refuse to port** while attempting to collect fees or settle an account, or for other reasons unrelated to validating a customer’s identity, e.g., an **OSP may not reject or delay a port request due to active or pending order(s) associated with the requested TN to port.**

# Which Federal Legal Entity is AT&T telling False Information the FCC or the US Federal District Court?

AT&T conceals to the FCC all porting in 2011 and claims no AT&T porting Rejections and now AT&T admits to the US Federal District Court 4 porting rejections occurred in 2011

LNP Porting Documents 847-768-0400

Ex-0021

Documents Produced by AT&T & 3rd Parties										
Bates Stamped				Documents Produced 2011-2013						
Date Event		3rd Party OOMA/XO Documents	AT&T US Court 9/25/14	Nuestar AT&T * 3/18/14	AT&T Logs Produced 1/14/14	Hearing 5/29/14	AT&T Attorney Thomas Green 6/29/14	Mittelstead 4/24/13	Baker/Execs FCC 9/22/11	Trammell FCC 4/11/11
12/9/2009	Port request 847-768-0400 (0400) in #23	Yes		No	No	No	No	No	No	No
12/16/2009	AT&T Rejected incorrect information	Yes		No	No	No	No	No	No	No
1/19/2010	Port rerquest (0400)	No		No	No	Yes	Yes	Yes	Yes	No
1/21/2010	AT&T Rejected incorrect information	Yes		No	No	Yes	Yes	Yes	Yes	No
2/4/2010	AT&T Tene Burse Confirms Cancel ATT-0065	Yes		No	Yes	No	No	No	No	No
3/3/2010	XO Porting Cancel	Yes	There are 4 porting Rejections in 2011 for "Open Pending Order" of 14 month old Order	No	No	Yes	Yes	No	No	No
3/21/2011	Port request	Yes		No	No	Yes	Yes	No	No	No
3/22/2011	Reject "Open Pending Order"	Yes		No	No	Yes	Yes	No	No	No
3/24/2011	Reject "Open Pending Order"	Yes		No	No	?	No	No	No	No
3/30/2011	Same Order Resent	Yes		No	No	Yes	No	No	No	No
3/31/2011	Reject "Open Pending Order"	Yes		No	No	Yes	Yes	No	No	No
4/4/2011	Reject "Open Pending Order"	Yes		No	No	?	No	No	No	No
4/6/2011	Same Order Resent	Yes		No	No	?	No	No	No	No
4/6/2011	Reject "Open Pending Order"	Yes		No	No	Yes	Yes	No	No	No
4/6/2011	Reject "Open Pending Order"	Yes		No	No	?	No	No	No	No
4/6/2011	Reject "Open Pending Order"	Yes	Documents was canceled in 2011 and XO Com Subpoena	No	No	?	No	No	No	No
4/19/2011	Port request	Yes		No	No	Yes	Yes	No	No	No
4/20/2011	Reject "Open Pending Order"	Yes		No	No	Yes	Yes	No	No	No
4/26/2011	Canceled	Yes		No	No	Yes	Yes	No	No	No
7/18/2011	Ported from ATT Mobility to ATT	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes
August 2011	Port Requested	No		No	No	No	No	Yes	Yes	Yes
August 2011	Port rejected not active	No		No	No	No	No	Yes	Yes	Yes
Sept 2011	Port Requested	No		No	No	No	No	Yes	Yes	Yes
Sept 2011	Port rejected not active	No		No	No	No	No	Yes	Yes	Yes
AT&T exposes intentional concealment scheme of porting rejections on 5/29/14 however still no documents							AT&T 2011 to 5/29/14 Intentional Concealment ALL Porting Request & AT&T Rejections			

The Date AT&T has NOT produced a single porting document requested in 11/18/13 attorney approved discovery. This to aide the concealment scheme.

## FACTS on AT&T Intentional Concealment Scheme

2011 Porting Rejections after concealment on 4/11/11, 9/22/11, 4/24/13, 10/18/13, 1/14/14 and 3/18/14 - ALL IN WRITING by AT&T  
Then on May 29, 2014, June 27, 2014 and September 25, 2014 now admit there was porting rejections by AT&T

\* AT&T owns the actual porting data, AT&T must approve any data released by Neustar see Neustar 3/18/14 letter.

AT&T refused to let Neustar release any information for the time frame in question only the on porting on 7/18/11. To add confusion in the Arbitration Hearing

AT&T did not need XO Communications to cancel the 2010 porting request when AT&T Mobility porting the number to AT&T on 7/18/11  
What happened to the AT&T alleged Open Order from 2010? AT&T has the documents but will not produce these documents.

## NANC LNP Process Flows

Port Type

Determination Process

Wireless ICP Process

Broadband Verification  
ProcessWireline Simple Port  
LSR/FOC ProcessWireline Non-Simple  
Port LSR/FOC Process

Main Porting Process

Subscription Version  
Create ProcessReseller/Interconnected  
VoIP Provider/Type 1  
Notification ProcessProvisioning Without  
Unconditional 10-Digit  
Trigger ProcessProvisioning With  
Unconditional 10-Digit  
Trigger ProcessConflict Flow for the  
Service Creation  
Provisioning ProcessCancellation Flow for  
Provisioning ProcessCancellation Ack  
Missing from New  
Provider Provisioning  
ProcessDisconnect Process for  
Ported TN

Audit Process

Code Opening Process

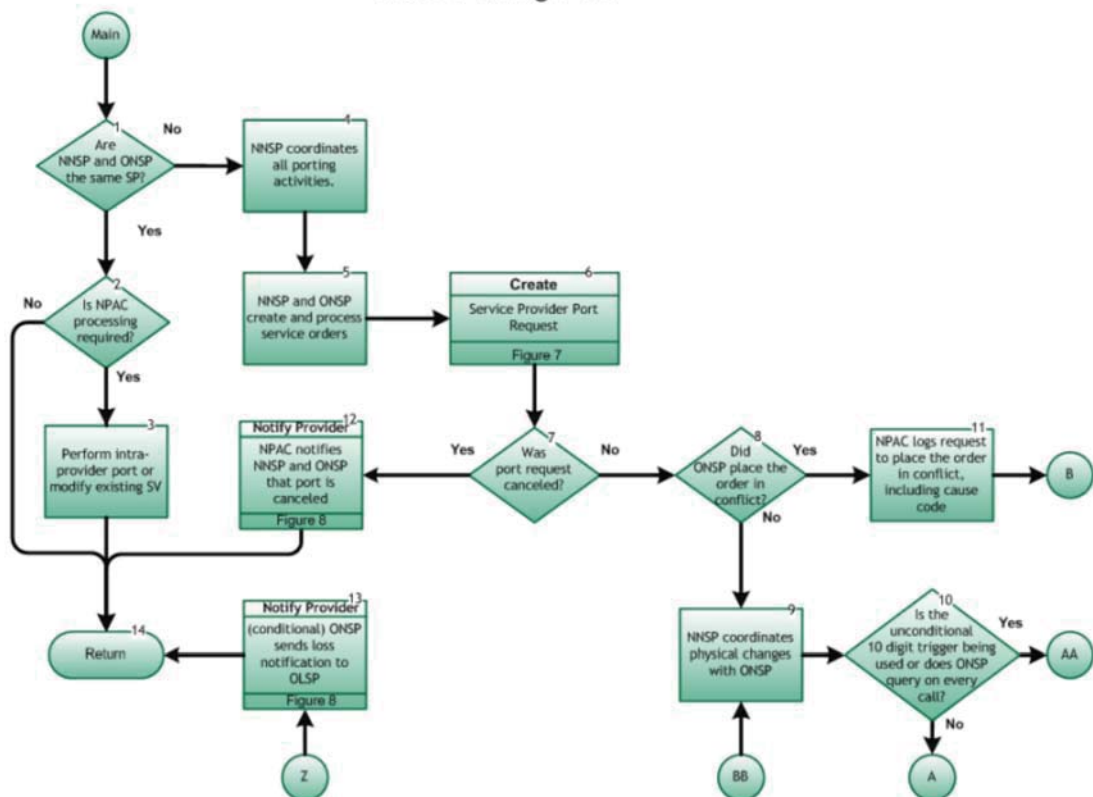
First TN Ported In  
NPA-NXX Process

Cancel-Undo Process

LNPA Working Group » NANC LNP Process Flows » Main Porting Process

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### Main Porting Flow



#### Step 1: Are NNSP and ONSP the same SP?

- If Yes, go to Step 2.
- If No, go to Step 4.

#### Step 2: Is NPAC processing required?

- If Yes, go to Step 3.
- If No, go to Step 14.

#### Step 3: Perform intra-provider port or modify existing SV

- NNSP enters intra-provider SV create data into the NPAC via the SOA interface for porting of end user in accordance with the NANC FRS and the NANC IIS. Upon completion of intra-provider port, [Return to Port Type Determination flow Figure 1, Step 11](#).

#### Step 4: NNSP coordinates all porting activities

- The NNSP must coordinate porting timeframes with the ONSP, and both provide appropriate messages to the NPAC. Upon completion of the LSR/FOC or ICP Process, and when ready to initiate service orders, go to Step 5.



**Step 5: NNSP and ONSP create and process service orders**

- Upon completion of the LSR/FOC or ICP Process, the NNSP and ONSP create and process service orders through their internal service order systems, based on information provided in the LSR/FOC or WPR/WPRR.

**Step 6: Create – Service Provider Port Request**

- Inter-Service Provider LNP Operations Flows – [Subscription Version Create Flow, Figure 7](#) .

**Step 7: Was port request canceled?**

- The port can be canceled by the ONSP, the NNSP, or automatically by an NPAC process.
- If Yes, go to Step 12.
- If No, go to Step 8.

**Step 8: Did ONSP place the order in Conflict?**

- Check Concurrence Flag.  
If concurred, the ONSP agrees to the port.  
If not concurred, a conflict cause code as defined in the FRS, is designated. ONSP makes a concerted effort to contact NNSP prior to placing SV in conflict.
- For wireline Simple Ports, the conflict request can be initiated up to the later of a.) the tunable time (Simple Port Conflict Restriction Window, current value of 9:00pm in the predominate time zone of the NPAC region where the number is being ported) one Business Day before the Due Date or b.) the T2 Timer (Final Concurrence Window tunable parameter) has expired.
- For wireline Non-Simple Ports, the conflict request can be initiated up to the later of a.) the tunable time (Conflict Restriction Window, current value of 12:00pm) one Business Day before the Due Date or b.) the T2 Timer (Final Concurrence Window tunable parameter) has expired. For wireless SPs using short timers for this SV, the conflict request can be initiated up to the time the T2 Timer (Final Concurrence Window tunable parameter) has expired.
- If Yes, go to Step 11.
- If No, go to Step 9.

**Step 9: NNSP coordinates physical changes with ONSP**

- The NNSP has the option of requesting a coordinated order. This is also the re-entry point from the Inter-Service Provider LNP Operations Flows – Conflict Flow for the Service Creation Provisioning Process, tie point BB, Figure 11.
- If coordination is requested on the LSR, an indication of Yes or No for the application of a 10-digit trigger is required. If No coordination indication is given, then by default, the 10-digit trigger is applied if technically feasible. If the NNSP requests a coordinated order and specifies 'No' on the application of the 10-digit trigger, the ONSP uses the 10-digit trigger at its discretion.

**Step 10: Is the unconditional 10 digit trigger being used or does ONSP query on every call?**

- The unconditional 10-digit trigger is assigned to a number on a donor switch during the transition period when the number is physically moved from donor switch to recipient switch. During this period it is possible for the TN to reside in both donor and recipient switches at the same time.
- For both Simple and Non-Simple Ports, the ONSP must deploy the 10-digit trigger in the donor switch, if technically feasible, or monitor the NPAC for activation in order to trigger the disconnect, or carriers perform a database query for every call origination. A 10-digit trigger is applied by the ONSP no later than 11:59pm the day prior to the due date.
- The unconditional 10-digit trigger may be applied by the NNSP.
- If Yes, go to Inter-Service Provider LNP Operations Flows - [Provisioning with Unconditional 10-Digit Trigger - tie point AA, Figure 10](#) .
- If No, go to Inter-Service Provider LNP Operations Flows - [Provisioning without Unconditional 10-digit Trigger - tie point A, Figure 9](#).

**Step 11: NPAC logs request to place the order in conflict, including cause code**

- Go to Inter-Service Provider LNP Operations Flows - [Conflict Flow for the Service Creation Provisioning Process - tie point B, Figure 11](#) .

**Step 12: Notify Provider – NPAC notifies NNSP and ONSP that port is canceled**

- Upon cancellation, NPAC logs this information, and changes the subscription status to *canceled* . Both SPs are notified of the change in the subscription status via the SOA interface.
- For the notification process, refer to Inter-Service Provider LNP Operations Flows – [Reseller/Interconnected VoIP Provider/Type 1 Notification, Figure 8](#) .
- Both SPs take appropriate action related to internal work orders.

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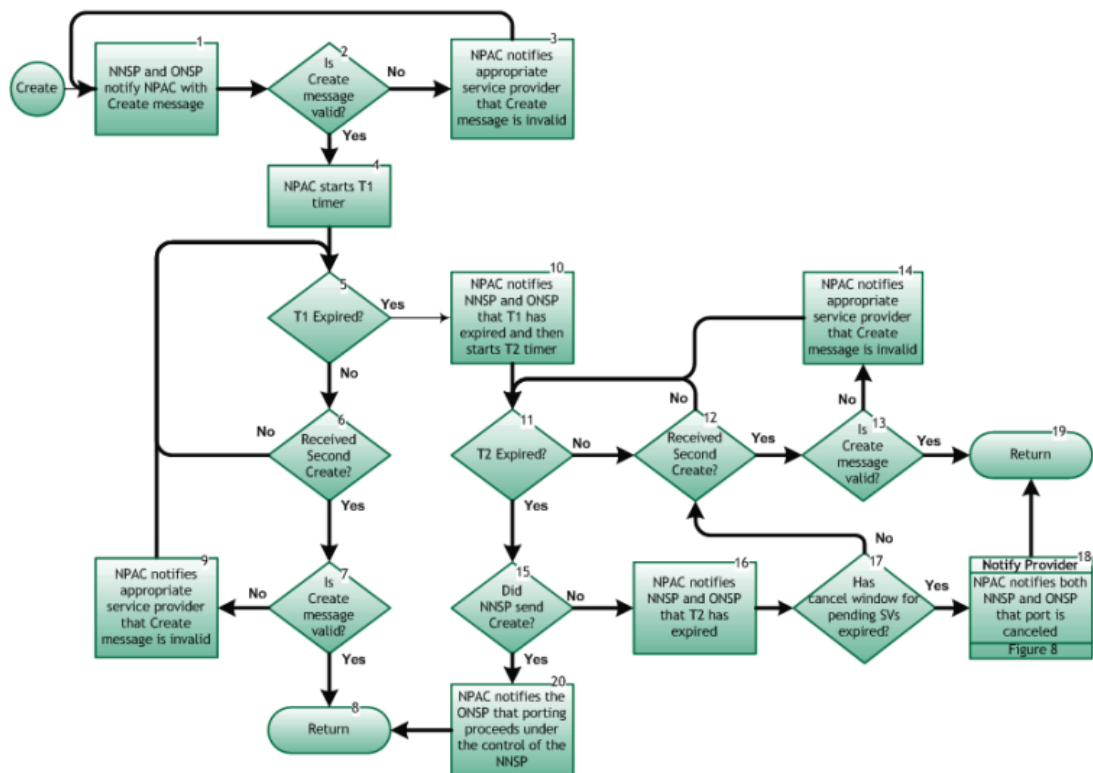
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## NANC LNP Process Flows

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Provisioning Process](#)[Cancellation Flow for  
Provisioning Process](#)[Cancellation Ack  
Missing from New  
Provider Provisioning  
Process](#)[Disconnect Process for  
Ported TN](#)[Audit Process](#)[Code Opening Process](#)[First TN Ported In  
NPA-NXX Process](#)[Cancel-Undo Process](#)

### Subscription Version Create Flow



**NOTE:** The following redlines were approved by LNPA WG in the March 6, 2013 meeting, and will be presented for approval to the NANC in their May 2013 meeting, and if approved at the NANC, will then be sent to the FCC for approval.

#### 0065 Redline PIM 81 LNP Process Flow and BP 65 Consensus changes\_6Mar2013

Download the document [0065 Redline PIM 81 LNP Process Flow and BP 65 Consensus changes\\_6Mar2013](#)

#### Step 1: NNSP and ONSP Notify NPAC with Create message

- Due date of the SV Create message is the due date on the FOC, where wireline due date equals date and time normalized to 00:00:00, and wireless due date equals date and time. For porting between wireless and wireline, the wireline due date format applies. Any change of due date in the NPAC must be a result of a change in the FOC due date. Exceptions may be made upon agreement between the porting parties (NNSP and ONSP).
- SPs enter SV data into the NPAC via the SOA interface for porting of End User in accordance with the NANC FRS and the NANC IIS.
- The NPAC/SMS expects to receive matching SV Create messages from the ONSP and the NNSP when facilitating porting of a telephone number. However, to prevent the possibility of the ONSP unnecessarily delaying a port, two timers were developed

and referred to as T1 and T2. If the ONSP does not send a matching SV create message (indicating either concurrence or conflict) to the NPAC, once both the T1 and T2 timers expire the NNSP can proceed with porting the telephone number on the FOC due date (SV Due Date). Exceptions may be made upon agreement between the porting parties (NNSP and ONSP) allowing earlier activation.

While some service providers choose not to send the concurring SV Create, but rather allow the timers to expire, the LNPA Working Group concludes that all service providers should send the matching SV Create messages to the NPAC/SMS. This will facilitate expeditious porting of telephone numbers and is more efficient than merely allowing timers to expire. The increased efficiency is especially beneficial in meeting the FCC mandated 1-day interval for Simple Ports.

[Note that the order in which the ONSP and NNSP Create messages arrive at the NPAC/SMS is immaterial.]

- With regard to the population of the Due Time on the NNSP and ONSP NPAC Create messages, current industry practices for both Mechanized SOA and Low Tech Interface (LTI) users will be maintained for Simple Ports.
- NNSP may not activate a port before midnight (00:00:00) local time of the FOC due date (SV Due Date) unless it has been verified with the ONSP that the port could be activated early without impacting the customer's service, or an earlier due date has been agreed to between the porting parties (ONSP and NNSP). Failing to verify first that the ONSP has completed all necessary steps in the port-out process, e.g., established the 10-Digit Unconditional Trigger, resolved any order fallout in systems, etc., could result in the customer's service being negatively impacted, such as inability to receive all of their calls.

#### **Step 2: Is Create message valid?**

- NPAC validates data to ensure value formats and consistency as defined in the FRS. This is not a comparison between NNSP and ONSP messages.
- If Yes, go to Step 4. If this is the first valid create message, the T1 Timer (Initial Concurrence Window tunable parameter) is started. SV Create Notifications are sent to both the ONSP and NNSP.
- If No, go to Step 3.

#### **Step 3: NPAC notifies appropriate Service Provider that create message is invalid**

- If the data is not valid, the NPAC sends error Notification to the SP for correction.
- The SP, upon Notification from the NPAC, corrects the data and resubmits to the NPAC. Re-enter at Step 1.

#### **Step 4: NPAC starts T1 timer**

- Upon receipt of the first valid create message, the NPAC starts the T1 Timer (Initial Concurrence Window tunable parameter). The value for the T1 Timer is configurable (one of three values) for SPs. Wireline and Intermodal ports will use either long or medium timers. The current value for the long timer (typically any wireline-involved Non-Simple porting) is nine (9) NPAC business hours. The current value for the medium timer (typically any wireline-involved Simple porting) is three (3) NPAC business hours. The current value for the short timer (typically wireless-to-wireless porting) is one (1) NPAC business hour.

#### **Step 5: T1 expired?**

- Short business hours (for wireline-involved Non-Simple porting) are defined as 7a-7p CT Monday through Friday, excluding NPAC-defined Holidays (Business Day start at 13:00/12:00 GMT, duration of 12 hours).
- Medium business hours (for wireline-involved Simple porting) are defined as 7a-12a Monday through Friday, excluding NPAC-defined Holidays in the predominant time zone for each NPAC region (Business Day start at NE/MA/SE [eastern time zone] 12:00/11:00 GMT, MW/SW/Canadian [central time zone] 13:00/12:00 GMT, WE [mountain time zone] 14:00/13:00 GMT, WC [west coast time zone] 15:00/14:00 GMT, duration of 17 hours).
- Long business hours (for wireless-to-wireless porting) are planned for 9a-9p in the predominant time zone for each NPAC region (Business Day start – NE/MA/SE 14:00/13:00 GMT, MW/SW/Canadian 15:00/14:00 GMT, WE 16:00/15:00 GMT, WC 17:00/16:00 GMT, duration of 12 hours).
- Short Business Days are currently defined as Monday through Friday, except holidays, and Long Business Days are currently defined as Sunday through Saturday (seven days a week), except holidays. Holidays and business hours are defined for each NPAC Region. If Yes, go to Step 10.
- If No, go to Step 6.

#### **Step 6: Received Second Create?**

- If Yes, go to Step 7.
- If No, return to Step 5.

#### **Step 7: Is Create message valid?**

- If Yes, go to Step 8.
- If No, go to Step 9.

#### **Step 8: Return to Figure 6**

- The porting process continues.
- Return to Main Porting Flow Figure 6, Create Process, Step 6.

#### **Step 9: NPAC notifies appropriate Service Provider that Create message is invalid**

EX-0160



- The NPAC informs the SP of an invalid create. If necessary, the notified Service Provider coordinates the correction.
- Return to Step 5.

**Step 10: NPAC notifies NNSP and ONSP that T1 has expired, and then starts T2 Timer**

- The NPAC informs the NNSP and ONSP of the expiration of the T1 Timer.
- Upon expiration, the NPAC starts the T2 Timer (Final Concurrence Window tunable parameter).

**Step 11: T2 Expired?**

- The NPAC provides a T2 Timer (Final Concurrence Window tunable parameter) that is defined as the number of hours after the expiration of the T1 Timer.
- The value for the T2 Timer is configurable (one of three values) for SPs. Wireline and Intermodal ports will use either long or medium timers. The current value for the long timer (typically any wireline-involved Non-Simple porting) is nine (9) NPAC business hours. The current value for the medium timer (typically any wireline-involved Simple porting) is three (3) NPAC business hours. The current value for the short timer (typically wireless-to-wireless porting) is one (1) NPAC business hour.
- Short business hours (for wireline-involved Non-Simple porting) are defined as 7a-7p CT Monday through Friday, excluding NPAC-defined Holidays (Business Day start at 13:00/12:00 GMT, duration of 12 hours).
- Medium business hours (for wireline-involved Simple porting) are defined as 7a-12a Monday through Friday, excluding NPAC-defined Holidays in the predominant time zone for each NPAC region (Business Day start at NE/MA/SE [eastern time zone] 12:00/11:00 GMT, MW/SW/Canadian [central time zone] 13:00/12:00 GMT, WE [mountain time zone] 14:00/13:00 GMT, WC [west coast time zone] 15:00/14:00 GMT, duration of 17 hours).
- Long business hours (for wireless-to-wireless porting) are planned for 9a-9p in the predominant time zone for each NPAC region (Business Day start – NE/MA/SE 14:00/13:00 GMT, MW/SW/Canadian 15:00/14:00 GMT, WE 16:00/15:00 GMT, WC 17:00/16:00 GMT, duration of 12 hours).
- Short Business Days are currently defined as Monday through Friday, except holidays, and Long Business Days are currently defined as Sunday through Saturday (seven days a week), except holidays. Holidays and business hours are defined for each NPAC Region. If Yes, go to Step 15.
- If No, go to Step 12.

**Step 12: Receives Second Create?**

- If Yes, go to Step 13.
- If No, return to Step 11.

**Step 13: Is Create message valid?**

- If Yes, go to Step 19.
- If No, go to Step 14

**Step 14: NPAC notifies appropriate service provider that Create message is invalid**

- The NPAC notifies the service provider that errors were encountered during the validation process.
- Return to Step 11

**Step 15: Did NNSP send Create?**

- If Yes, go to Step 20.
- If No, go to Step 16

**Step 16: NPAC notifies NNSP and ONSP that T2 has expired**

- The NPAC notifies both NNSP and ONSP of T2 expiration.

**Step 17: Has cancel window for pending SVs expired?**

- If Yes, go to Step 18.
- If No, return to Step 12

**Step 18: Notify Provider – NPAC notifies NNSP and ONSP that port is canceled**

- The SV is canceled by NPAC by tunable parameter (30 days). Both SPs take appropriate action related to internal work orders.
- For the Notification process, refer to Inter-Service Provider LNP Operations Flows – Reseller/Interconnected VoIP Provider/Type1 Notification, Figure 8.

**Step 19: Return to Figure 6**

- Return to Main Porting Flow Figure 6, Create Process, Step 6.

**Step 20: NPAC notifies ONSP that porting proceeds under the control of the NNSP**

EX-0161

- A Notification message is sent to the ONSP noting that the porting is proceeding in the absence of any message from the ONSP.

# EXHIBIT F

JUDGE GARY L. TAYLOR, RETIRED  
JAMS, Inc.  
500 N. State College Blvd.  
14<sup>th</sup> Floor  
Orange, CA 92868  
Telephone: 714-939-1300  
Facsimile: 714-939-0869

ARBITRATOR

IN THE MATTER OF THE ARBITRATION  
BETWEEN

TOYOTA MOTOR SALES, U.S.A., INC.

JAMS Ref. No. 1220040045

and

DIMITRIOS P. BILLER

**RULING ON CRIME-FRAUD  
EXCEPTION AND CLAIMED WAIVERS  
RE ATTORNEY-CLIENT PRIVILEGE**

The Arbitrator has studied the parties' exhaustive briefing, declarations, and exhibits concerning Mr. Biller's April 21, 2010 evidence motion for a finding that his testimony and certain documents, which might otherwise be non-admissible under the attorney-client privilege, are usable in discovery and at the arbitration hearing under the "crime-fraud" exception to that privilege, or under certain other waivers. The Arbitrator rules that a prima facie showing under the crime-fraud exception has been made and the subject documents may be used in discovery and at the arbitration hearing, but the other claimed general waivers do not apply.

The Arbitrator does not rule that a crime or a fraud has taken place. The ruling is simply that a prima facie showing has been made, so otherwise-privileged materials may be used in discovery and arbitration.

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1 I. PRELIMINARY MATTERS

2 Mr. Biller's objection to Toyota's "overview" and document-by-document commentary  
3 in its second Response is overruled. The items do not purport to be evidence, but are proper as  
4 counsel's argument of what the evidence shows.

5 Mr. Biller's Motion to Strike in whole or part Toyota's supporting declarations is denied.  
6 Any defects in the declarations go to their weight rather than admissibility. The Arbitrator is  
7 able to identify and disregard portions of the declarations that might be hearsay, not relevant,  
8 speculative, or otherwise inappropriate.

9 The Arbitrator ruled that no in-camera testimony hearing was appropriate because the in-  
10 camera aspect of this presentation was the viewing of documents, and the parties had fully  
11 presented their relevant testimony by declarations. As stated in Mr. Reynolds' August 27, 2010  
12 letter and frequent other statements by counsel, Toyota wants to present an evidentiary response  
13 to Mr. Biller's attacks and criticism. However, this motion is only to decide whether certain  
14 evidence is usable based on a prima facie showing, and is not an opportunity for Toyota to  
15 present a full contest of that evidence, or, as Mr. Reynolds says, "clear our good name". That  
16 opportunity will come at the arbitration hearing on the merits.

17 II. CRIME-FRAUD EXCEPTION TO ATTORNEY-CLIENT PRIVILEGE

18 On the evidence admissibility issue presented, the Arbitrator concludes a prima facie  
19 showing has been made to permit use of certain testimony and documents, otherwise attorney-  
20 client privileged, in discovery and at the arbitration hearing.

21 A. Legal Standard

22 Under California Evidence Code section 956, an exception to the attorney-client  
23 privilege exists "if the services of the lawyer were sought or obtained to enable or aid anyone to  
24 commit or plan to commit a crime or a fraud." The development of California case law on the  
25 exception has become fairly clear. The exception is very limited, and requires extreme caution  
26 in its application. The exception is not justified by showing that a client engaged in criminal or  
27 fraudulent conduct; it must be shown that the client sought or obtained the layers' services in  
28 order to do so. However, no completed crime or fraud is required.

1        State Farm Fire & Casualty Co. v. Superior Court, 54 Cal.App.4<sup>th</sup> 625 (1997) is  
2 particularly instructive in this case because it involved a former employee of the client's legal  
3 department who testified that documents existed which were responsive to discovery requests,  
4 but were not produced. State Farm made it clear in California that evading production of  
5 evidence in discovery can be considered a fraud upon the court sufficient to trigger the crime-  
6 fraud exception to the attorney-client privilege.

7        The mere assertion of fraud or a showing of "probably cause" is not sufficient to  
8 establish the exception. Claimant must make a prima facia showing that his services were  
9 sought or obtained to enable or aid Toyota to commit or plan to commit discovery fraud. A  
10 prima facia showing is a showing of some foundation in fact. It is evidence sufficient for a  
11 reasonable inference to be drawn; that is, enough evidence for the factfinder to infer the fact at  
12 issue and rule in the party's favor.

13        As noted by the B.P. Alaska case, cited by the parties, a prima facia showing in a crime-  
14 fraud analysis is "one which will suffice for proof of a particular fact unless contradicted and  
15 overcome by other evidence". This language does not mean that the contradictory evidence is  
16 weighed in the crime-fraud motion to determine whether there is a prima facia case. The  
17 language means that the preliminary showing, standing alone, is sufficient to win the point at the  
18 later arbitration hearing if it is not later contradicted by other evidence. The contradictory  
19 evidence is not weighed for a preponderance of the evidence in determining if a preliminary,  
20 prima facia showing is made. A prima facia showing is a showing sufficient to support a finding  
21 if evidence to the contrary is disregarded; it is the evidence that would be necessary to require  
22 the other side to proceed with its case.

23        The issue at this motion stage is not whether Toyota's evidence shows discovery fraud  
24 didn't occur. That is an issue of fact for the arbitration hearing, after Mr. Biller has had a  
25 discovery opportunity.

26        The Arbitrator does not agree with the suggestion that California law contemplates a  
27 preponderance of the evidence standard. California uses the "prima facia case" standard at this  
28 preliminary stage.

1 The Arbitrator disagrees with the assertion that the crime-fraud exception arises only if  
2 the disclosure is compelled. Probably most crime-fraud cases involve that situation, but it does  
3 not appear to be required by the statute or cases. The Arbitrator is unaware of authority holding  
4 that such a rule applies.

5 The crime-fraud exception does not create a wholesale waiver of the attorney-client  
6 privilege. It is necessary to conduct a document-by-document analysis of each document to  
7 determine if the exception applies to it. The analysis is not to see if that document, itself, shows  
8 a crime or fraud. Rather, if the body of evidence shows a prima facie case that the lawyer was  
9 employed to enable or aid a crime or fraud, each document is examined to determine its usability  
10 based on whether it has a "reasonable relation" to the claimed crime or fraud. B.P. Alaska  
11 Exploration, Inc. v. Superior Court, 199 Cal.App.3d 1240, 1269 (1988).

12 B. Prima Facie Showing

13 The initial point on this motion is that the subject documents are, in fact, attorney-client  
14 privileged. Except as to the few public documents involved, Toyota maintains the attorney-  
15 client privilege applies. Mr. Biller has not conceded that point, but it is apparent from Mr.  
16 Biller's employment position and the nature of the documents that the attorney-client privilege  
17 probably applies. For purposes of this motion the Arbitrator will assume that the non-public  
18 documents are attorney-client privileged.

19 Mr. Biller contends that Toyota retained him to assist Toyota to plan and carry out  
20 discovery fraud. The Arbitrator has reviewed the evidence offered to make a prima facie  
21 showing of this contention, including an in-camera review of multiple documents. Mr. Biller  
22 testified by declaration directly on this point, but he concedes no document specifically shows  
23 he was instructed to commit discovery fraud. He asserts, however, that his testimony and the  
24 body of documents shows that he was hired to develop policies and tactics under developing  
25 discovery rules that would assist Toyota to evade those rules and destroy or conceal harmful  
26 evidence.

27 The Arbitrator finds that a prima facie showing has been made. To restate the point, this  
28 is not a finding that Mr. Biller's showing will prevail at the arbitration hearing in the face of

1 Toyota's contrary evidence. It is merely a finding that enough of a preliminary showing has  
2 been made to permit the use of otherwise-privileged evidence in discovery and at the arbitration  
3 hearing.

4 The prima facia showing is made from two sources:

5 1. Mr. Biller's Testimony

6 Mr. Biller's testimony is probably sufficient by itself to establish a prima facia showing.  
7 He was a key lawyer in Toyota's litigation department, having first-hand knowledge of much  
8 significant evidence.

9 Mr. Biller testifies that he was hired to help Toyota subvert discovery, and significant  
10 discoverable documentation was not produced. In summary, his testimony includes specific  
11 assertions that, among other things, his immediate supervisor told him to follow the "Golden  
12 Rule" to do anything necessary to protect the client including a criminal act or violation of law,  
13 he was instructed to not preserve or produce certain discoverable data, Toyota concealed and  
14 destroyed test data on rollover cases, Toyota repeatedly falsely represented and testified it had  
15 no head clearance "margin" for the federal standard when it really did, an August 2006 e-mail  
16 refers to the need to "bury" a non-supportive engineering report, and Toyota concealed  
17 information on computer systems. He says he discussed at a "discovery summit" in May 2007  
18 that there was a policy since the 1970's to conceal discoverable evidence, and Toyota was not  
19 going to change.

20 Although Mr. Biller's testimony may be refuted at the arbitration hearing, it helps  
21 establish a prima facia showing at this preliminary stage.

22 2. Documents

23 Mr. Biller's testimony is augmented by various documents in making a prima facia  
24 showing. Although there may be evidence to the contrary at the arbitration hearing, the  
25 following is a selection of a few of the more significant documents:

- 26 a. Mr. Biller's November 12, 2006 e-mail discusses that Toyota has discoverable  
27 documents not being produced, and the necessity for production.

28 \\\



- 1 b. Mr. Biller's December 6, 2006 e-mail discusses nondisclosure of the Books of  
2 Knowledge.
- 3 c. Mr. Biller's September 1, 2007 memo to his supervisor discusses that important  
4 discovery response e-data is not being disclosed.
- 5 d. Mr. Biller provides an engineering test report (Biller declaration, Exhibit 7) that he  
6 says was discoverable but not produced, and Toyota destroyed the test data.
- 7 e. Mr. Biller provides Toyota's internal safety standards (Biller declaration, Exhibit 8)  
8 which he says were discoverable but not produced.

9 Toyota is correct that most of the subject documents were originated by Mr. Biller, but  
10 that does not prevent them from contributing to a prima facie case. On a prima facie basis, the  
11 documents appear to support Mr. Biller's contentions. Taking Mr. Biller's testimony and the  
12 documents together, a prima facie showing is made.

13 C. Document-by Document Analysis

14 The existence of a prima facie case does not destroy the attorney-client privilege for all  
15 of Toyota's privileged materials. It only avoids the privilege for discovery and hearing evidence  
16 purposes for items that have a reasonable relation to the claimed crime or fraud. In this case,  
17 that is a rather broad category. The asserted fraud is discovery fraud: the destruction or  
18 concealment of discoverable evidence. Items having a "reasonable relation" to this claimed  
19 fraud would include items on the topic of discovery production. The item need not show fraud.  
20 It must, however, have a reasonable relation to the topic of production of discoverable evidence.

21 Although not evidence, Toyota's second Response, Exhibit 2, "Overview" of Mr.  
22 Biller's documents is helpful. In the first paragraph ("Overview of Documents") of each  
23 section, Toyota concisely describes the topics of Mr. Biller's offered documents. The Arbitrator  
24 concludes that these descriptions are accurate, and each of the documents has a reasonable  
25 relation to the claimed discovery fraud. Each of these documents may be examined upon in  
26 discovery, and, if otherwise admissible, used at the arbitration hearing.

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1                   III. CLAIMED WAIVERS OF THE ATTORNEY-CLIENT PRIVILEGE

2           Mr. Biller asserts there have been several waivers of the attorney-client privilege as to  
3 Toyota's protected materials. The Arbitrator concludes that no general waiver has occurred.

4           A. Congressional Subpeona

5           Mr. Biller asserts that Toyota documents provided under subpoena to Congress have lost  
6 their attorney-client privilege because Toyota did not take all reasonable steps to protect the  
7 attorney-client privilege of those documents. Toyota objected repeatedly to Congressional  
8 review of the documents, and Congress has not revealed the documents except four documents  
9 mistakenly revealed for a short time. The Arbitrator finds Toyota took reasonable steps under  
10 the circumstances to protect the privilege.

11           B. Lawsuit Against Mr. Biller

12           Mr. Biller contends Toyota waived all rights to the attorney-client privilege by suing him  
13 for professional breach in disclosing Toyota's confidential information. California Evidence  
14 Code section 958 provides there is no attorney-client privilege "as to a communication relevant  
15 to an issue of breach by the lawyer or by the client, of a duty arising out of the lawyer-client  
16 relationship". This section does not accomplish a general waiver of Toyota's privilege because  
17 it sued Mr. Biller. At most, it precludes Toyota from preventing Mr. Biller from using evidence  
18 necessary to his defense of Toyota's suit. Section 958 does not authorize public distribution of  
19 Toyota's information: although Mr. Biller may use privileged materials in his defense, the  
20 privilege still prevents disclosure to the public.

21           C. Recommendation Letter

22           Mr. Biller contends the laudatory April 3, 2008 letter of recommendation from Toyota's  
23 Vice President and General Counsel constitutes a waiver or consent for Mr. Biller to disclose  
24 Toyota's litigation strategies, settlement negotiations, and e-discovery because the letter  
25 discloses a "significant part" of such information. California Evidence Code Section 912(a).  
26 For purposes of this preliminary motion, the Arbitrator finds that the subject letter does not  
27 disclose a "significant part" of the information Mr. Biller seeks to reveal. Mr. Biller is free to  
28 disclose the letter and the complimentary things it says about him, but, for purposes of this

1 motion ruling, the letter is not a waiver or consent to expose details protected by privilege or  
2 confidentiality.

#### 3 IV. DISPOSITION

4  
5 1. A prima facia showing has been made to invoke the crime-fraud exception to the  
6 attorney-client privilege, permitting use of otherwise-privileged material in discovery and at the  
7 arbitration hearing.

8 2. This exception is not a general abrogation of Toyota's attorney-client privilege. It  
9 applies only on a document-by-document analysis basis. The Arbitrator finds that the motion  
10 documents originally submitted by Mr. Biller and listed on Toyota's second Reply, Exhibit 2  
11 "Overview" have a reasonable relation to the claimed discovery fraud.  
12

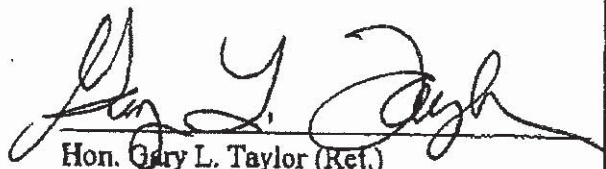
13 3. Neither the Congressional subpoena, the lawsuit against Mr. Biller, nor Mr. Biller's  
14 recommendation letter accomplished a general waiver of Toyota's attorney-client privilege or  
15 confidentiality rights.  
16

17 4. It appears likely that, in the course of the parties' remaining discovery, additional  
18 otherwise-privileged documents will come up, which are also reasonably related to the topic of  
19 the claimed discovery fraud. The Arbitrator has not had the opportunity to specifically rule on  
20 such additional documents in this motion, so the Arbitrator will expect the parties to apply this  
21 ruling to any additional document to permit use of it in discovery if it is reasonably related to  
22 claimed discovery fraud. If agreement cannot be reached on use of an additional document, the  
23 Arbitrator will make a ruling.  
24

25 5. This ruling does not create a general invalidation of Toyota's rights; it only means  
26 certain otherwise-privileged materials are usable as evidence. This order does not rule that  
27 discovery fraud took place; it rules only that a prima facia showing is made, and the matter will  
28

1 be litigated at the arbitration hearing. This ruling does not permit public disclosure of any of the  
2 subject materials; although Mr. Biller may use the materials as stated in this ruling, until further  
3 order of the Arbitrator such materials will remain confidential within this arbitration, with no  
4 public disclosure.

5  
6 DATED: September 1, 2010

7   
8 Hon. Gary L. Taylor (Ret.)  
9 Arbitrator  
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# EXHIBIT G

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
CenturyLink	)	IC No. 10-S0298078
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER**

**Adopted: April 26, 2011**

**Released: April 29, 2011**

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint<sup>1</sup> alleging that CenturyLink changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.<sup>2</sup> We conclude that CenturyLink's actions violated the Commission's carrier change rules and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).<sup>3</sup> Section 258 prohibits the practice of

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<sup>1</sup> Informal Complaint No. IC 10-S0298078, filed April 27, 2010.

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>3</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

“slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.<sup>4</sup> In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>5</sup> Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.<sup>6</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>7</sup>

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.<sup>8</sup> Where the subscriber has paid charges to the unauthorized carrier, the Commission’s rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>9</sup> Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.<sup>10</sup>

4. We received Complainant’s complaint on April 27, 2010, alleging that Complainant’s telecommunications service provider had been changed to MCI, Inc. (MCI) without Complainant’s authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>11</sup> we

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<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> See 47 C.F.R. § 64.1120.

<sup>6</sup> 47 U.S.C. § 258(a).

<sup>7</sup> See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

<sup>8</sup> See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>10</sup> See 47 U.S.C. § 503.

<sup>11</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).



notified MCI of the complaint, and Verizon responded on behalf of MCI on July 2, 2010.<sup>12</sup> Based on Verizon's response and pursuant to Sections 1.719 and 64.1150 or our rules,<sup>13</sup> we notified CenturyLink of the complaint. CenturyLink has failed to respond to the complaint within 30 days.<sup>14</sup> The failure of CenturyLink to respond or provide proof of the verification is presumed to be clear and convincing evidence of a violation.<sup>15</sup> Therefore, we find that CenturyLink's actions resulted in a violation of our carrier change rules and we discuss CenturyLink's liability below.<sup>16</sup> We also will forward a copy of the record of this proceeding to our Enforcement Bureau to determine what additional action may be necessary.

5. CenturyLink must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.<sup>17</sup> We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that CenturyLink may not pursue any collection against Complainant for those charges.<sup>18</sup> Any charges imposed by CenturyLink on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying at the time of the unauthorized change.<sup>19</sup>

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against CenturyLink IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the

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<sup>12</sup> Verizon's Response to Informal Complaint No. IC 10-S0298078, received July 2, 2010. MCI and Verizon merged in 2006, but MCI remains a separate entity.

<sup>13</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>14</sup> Notice of Informal Complaint IC 10-S0298078 was mailed on January 20, 2011. The Commission received the certified mail return receipt confirming delivery was made, and the U.S. Postal "Track and Confirm" system confirms that delivery was made on January 24, 2011.

<sup>15</sup> See 47 C.F.R. § 64.1150(d).

<sup>16</sup> If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

<sup>17</sup> See 47 C.F.R. § 64.1160(b).

<sup>18</sup> See 47 C.F.R. § 64.1160(d).

<sup>19</sup> See 47 C.F.R. §§ 64.1140, 64.1160.



charges incurred during the first thirty days after the unauthorized change occurred and CenturyLink may not pursue any collection against Complainant for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief  
Consumer Policy Division  
Consumer & Governmental Affairs Bureau

## CERTIFICATE OF SERVICE

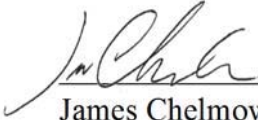
I HEREBY CERTIFY that on this 27th day of August, 2015, a Complainant's Reply to Defendant's Opposition to Petition to Reconsideration against AT&T Mobility LLC, was electronic sent by email and the FCC's electronic filing system to the Defendant.

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Counsel for AT&T Mobility LLC

August 27, 2015

Date

  
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James Chelmowski  
Complainant